

# CARGO PREFERENCE

Y 4. M 53: 103-7

## ARING

BEFORE THE  
Cargo Preference, Serial No. 103-7, ... ON MERCHANT MARINE  
OF THE

### COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

### H.R. 57

A BILL TO AMEND TITLE 10, UNITED STATES CODE, TO  
CLARIFY THE PREFERENCE FOR UNITED STATES-FLAG  
MERCHANT VESSELS IN THE CARRIAGE OF DEPART-  
MENT OF DEFENSE CARGOES, AND FOR OTHER PUR-  
POSES

FEBRUARY 24, 1993

### Serial No. 103-7

Printed for the use of the Committee on Merchant Marine and Fisheries



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1993

68-497 --

For sale by the U.S. Government Printing Office  
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-041036-3



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## CARGO PREFERENCE

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WEDNESDAY, FEBRUARY 24, 1993

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON MERCHANT MARINE,  
COMMITTEE ON MERCHANT MARINE AND FISHERIES,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:05 a.m., in room 1334, Longworth House Office Building, Hon. William O. Lipinski (chairman of the subcommittee) presiding.

Present: Representatives Lipinski, Pickett, Green, Hastings, Reed, Bateman, Kingston, Diaz-Balart.

Also Present: Representative Bentley.

Staff Present: Subcommittee on Merchant Marine: Keith Lesnick, Staff Director; Sharon K. Brooks, Counsel; David Honness, Professional Staff; Natalie Hidalgo, Professional Staff; Randy Morris, Subcommittee Clerk; Fred Zeytoonjian, Staff Aide; Hugh N. Johnston, Minority Counsel. Committee on Merchant Marine and Fisheries: Jeffrey R. Pike, Staff Director; Edmund B. Welch, Counsel; Carl W. Bentzel, Counsel; John Cullather, Professional Staff; Sue Waldron, Press Assistant; Ann M. Mueller, Clerk; Cynthia M. Wilkinson, Minority Chief Counsel; Kip Robinson, Minority Counsel.

### STATEMENT OF HON. WILLIAM O. LIPINSKI, A U.S. REPRESENTATIVE FROM ILLINOIS, AND CHAIRMAN, SUBCOMMITTEE ON MERCHANT MARINE

Mr. LIPINSKI. Good morning to everyone. Today, the subcommittee will continue its investigation of cargo preference issues and enforcement of cargo preference laws and regulations. We will renew our efforts of last year by hearing testimony from Congresswoman Helen Bentley and witnesses representing the Department of Transportation and the United States merchant shipping industry. We requested the participation of the Department of State and the Department of Defense, and we are confident that they will testify at a later date when the administration has filled its positions. Today's deliberations are an important step in an ongoing effort to identify and address problems relating to cargo preference programs administrated by United States Government agencies.

As early as 1904, United States laws have provided that U.S.-flag ships carry a certain share of cargoes produced by United States Government programs. However, it has been brought to our attention that loopholes may exist which allow agencies to circumvent the intent of cargo preference laws. Specifically, we will look into the Government of Kuwait's use of U.S.-flag ships in the rebuilding

of its country. We will also ask the Maritime Administration about the Israeli \$10 billion loan guarantee and whether the money will be used to purchase United States goods and ship them on U.S.-flag vessels. Finally, we will request the Maritime Administration and the carriers to comment on H.R. 57.

During the Gulf War, our Country made many sacrifices to assist the Kuwaitis in their struggle against aggression. United States merchant vessels ensured the timely delivery of cargoes essential to the success of the war effort. As a gesture of gratitude, the Government of Kuwait pledged to use U.S.-flag vessels in the carriage of cargoes to rebuild their country. Despite this pledge, not a single U.S.-flag vessel has carried cargo bound for Kuwait. We hope to uncover an explanation and a possible remedy to this problem.

Despite efforts by the subcommittee and other Members of Congress, the United States' \$10 billion loan guarantee agreement with Israel is void of any commitment to buy- and ship-American. The Department of State refused to appear before the subcommittee last September to discuss this issue before an agreement was finalized. The Department of Transportation has been called upon to elaborate on its efforts in working with the Department of State to seek the Government of Israel's commitment to buy United States goods and to ship these goods on U.S.-flag vessels with United States loan-guaranteed funds.

Finally, the subcommittee would like to study the provisions put forth in H.R. 57, a bill to clarify the preference for U.S.-flag merchant vessels in the carriage of Department of Defense cargoes. This bill is an attempt to statutorily establish a preference system similar to practices set forth in the Wilson-Weeks Agreement.

Another cargo preference hearing will be held later this year, and we will aggressively seek testimony from the Department of State regarding Kuwait's failed commitment to use U.S.-flag vessels. We are also interested in hearing why State was unable to secure buy- and ship-American provisions in the Israeli loan guarantee agreement. In addition, we will hear from the Department of Defense regarding its cargo preference programs. These and other cargo preference issues will be our focus as the subcommittee works to resolve problems with the United States Government's cargo preference programs and to strengthen America's maritime industry.

Mr. LIPINSKI. Now, I would like to recognize the Ranking Minority Member of the subcommittee, Congressman Bateman.

#### STATEMENT OF HON. HERBERT BATEMAN, A U.S. REPRESENTATIVE FROM VIRGINIA

Mr. BATEMAN. Thank you very much, Mr. Chairman. I want to compliment you on choosing cargo preference as the subject for the first hearing before the Merchant Marine Subcommittee. As a strong proponent of maintaining our U.S.-flag merchant marine, both from a national defense standpoint and also from a national economic perspective, it is essential that we assure our current cargo preference laws are being enforced. I am aware that in some cases enforcement has been sporadic. I am aware that in other



cases the laws are simply unclear and thus lend themselves to multiple interpretations.

And, finally, I am aware that we in the Congress have simply overlooked certain language contained in some of our enactments. Whether the problems are ones of interpretation, enforcement, or statutory language, we in the Congress and the Administration need to agree on a course of action that will lead to a meaningful, comprehensive, and enforceable preference program, a program that will assure our U.S.-owned, U.S.-crewed, U.S.-flag merchant marine past 1995.

I say 1995 because without cargo preference as a key element of a maritime reform, we will, by all accounts, be looking at the total demise of our U.S.-flag liner operators in these next two years. That is a scenario that this member wants to avoid at all possible cost.

Finally, I would be remiss if I did not acknowledge the presence of a former member of our committee who is perhaps the strongest proponent of an enforceable cargo preference program regardless of party affiliation, the Congresswoman from Maryland, the Honorable Helen Bentley. We on the committee and those in the audience look forward to your presentation today. Mr. Chairman, that concludes my statement, and, again, thank you for presiding and calling this hearing.

Mr. LIPINSKI. Thank you, Mr. Bateman. I have in my possession a statement by the Chairman of the Full Committee, Congressman Studds, and I ask unanimous consent that Chairman Studds's statement be placed in the record. Without objection, so ordered.

[Statement of Mr. Studds follows:]

STATEMENT OF HON. GERRY E. STUDDS, A U.S. REPRESENTATIVE FROM MASSACHUSETTS,  
AND CHAIRMAN, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. Chairman, it looks as if this Subcommittee will be aggressive in its oversight of how Federal agencies are complying with our laws on Government-impelled cargoes. That's good!

Our preference laws are based on a clear and well-thought-out policy: when our Government ships cargo, or causes it to be shipped, via ocean transportation, a substantial portion of it should go on commercially-operated U.S.-flag vessels.

This is such a simple policy that it never ceases to amaze me when I hear various Government agencies say it is hard to understand—or maintain that it is inconvenient to comply with.

We say we want a healthy merchant marine. If we mean it, we ought to insist that our Federal agencies use U.S.-flag vessels at every opportunity. We should not argue about what the law requires; we should actively try to exceed the mandates of the cargo preference statutes. I intend to do all that I can to achieve these goals.

Mr. LIPINSKI. The Chair now recognizes Congressman Green for an opening statement.

STATEMENT OF HON. GENE GREEN, A U.S. REPRESENTATIVE  
FROM TEXAS

Mr. GREEN. Thank you, Mr. Chairman, members of the committee. I appreciate the opportunity to have this as our first full public hearing. I think cargo preference legislation is important to all regions of the country, particularly from the region that I represent, and I appreciate the opportunity to see if we can encourage compliance with current Federal laws; if not, then looking at putting some teeth into the current laws. Thank you, Mr. Chairman.

Mr. LIPINSKI. Thank you, Congressman. The Chair now recognizes Congressman Kingston.

**STATEMENT OF HON. JACK KINGSTON, A U.S. REPRESENTATIVE FROM GEORGIA**

Mr. KINGSTON. Thank you, Mr. Chairman. I am happy to be here and just interested to hear what everyone has to say.

Mr. LIPINSKI. Thank you very much. The Chair recognizes Congressman Hastings.

Mr. HASTINGS. Mr. Chairman, thank you very much. In the interest of time, I will waive any comment at this time. It is a pleasure to be here with you, sir.

Mr. LIPINSKI. We appreciate that statement very much. Congressman Diaz-Balart?

Mr. DIAZ-BALART. That is pretty close.

Mr. LIPINSKI. Pretty close? Well, I congratulate myself for getting pretty close.

**STATEMENT OF HON. LINCOLN DIAZ-BALART, A U.S. REPRESENTATIVE FROM FLORIDA**

Mr. DIAZ-BALART. Thank you. There are serious questions that need to be asked with regard to our U.S.-flag ships. Thank you.

Mr. LIPINSKI. Thank you. Congressman Reed.

**STATEMENT OF HON. JACK REED, A U.S. REPRESENTATIVE FROM RHODE ISLAND**

Mr. REED. Thank you, Mr. Chairman. I want to commend you for having this hearing and focusing on this very important topic. A vibrant and robust merchant marine is critical to our national security and to our national economic prosperity. We are all here, I think, to make sure that we do have a vibrant and robust merchant marine. And I thank you again. I would like permission, if I could, to include a written statement.

Mr. LIPINSKI. Without objection, so ordered.

Mr. REED. Thank you, Mr. Chairman.

[Statement of Mr. Reed follows:]

**STATEMENT OF HON. JACK REED, A U.S. REPRESENTATIVE FROM RHODE ISLAND**

Mr. Chairman, I want to thank you for calling this hearing. I look forward to listening to the testimony of our witnesses, and I appreciate the critical insights that they bring to our deliberations.

Since the early 1900's, we have sought to build a robust U.S. flagged merchant marine.

One of the key elements of our strategy to achieve this goal has been cargo preference for U.S. flagged carriers. Whether it is the 1985 Farm Bill, the Wilson-Weeks Agreement, or the Military Transportation Act of 1904, Congress has consistently urged full participation by American shippers when and where U.S. Government contracts, cargo, aid, or loans are involved. I believe this is a common sense policy that helps the U.S. flagged fleet on the high seas and demonstrates to the people of America that foreign aid is not simply a "give away" program with no return other than feeling good.

However, over the last few years, we have heard reports that we may be failing to adequately ensure that U.S. flagged carriers participate in the rebuilding of Kuwait and in the shipment of goods to Israel purchased with American loan guarantees. For that reason alone, this hearing and future hearings with representatives of the Departments of Defense and State are very important.

As we all know, our private, U.S. flagged carriers face incredible international competition. Cargo preference requirements are one way we can keep the U.S. flagged fleet going, and I hope this hearing helps us maintain a fair and enforceable cargo preference policy.

But we need to do more to preserve America's maritime industry than just ensuring that cargo preference rules are followed. We need to reinvigorate our shipyards at the same time we need to rejuvenate American shipping lines. I know the Members of this Subcommittee share this goal and I look forward to working with them in the future. Thank You, Mr. Chairman.

Mr. BATEMAN. Mr. Chairman?

Mr. LIPINSKI. Mr. Bateman.

Mr. BATEMAN. I would like to ask unanimous consent that the written statement of our colleague, Congressman Jack Fields of Texas, the ranking minority member of the full committee, be entered into the record of this hearing.

Mr. LIPINSKI. Without objection, so ordered.

[Statement of Mr. Fields follows:]

STATEMENT OF HON. JACK FIELDS, A U.S. REPRESENTATIVE FROM TEXAS, AND RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. Chairman, I am pleased that the Merchant Marine Subcommittee is continuing its oversight of the Executive Branch compliance with the Federal Cargo Preference laws.

The hearing held by the Subcommittee last year on September 30, 1992, represented a first step towards developing a record of Government's implementation of these laws. The Subcommittee focused at that time on (1) the transportation of military equipment under the Conventional Forces in Europe Treaty; (2) the shipment of meals ready to eat to a number of countries under the DOD Humanitarian Assistance Program; (3) Administrative waivers by the Agency for International Development; and (4) the \$10 billion Loan Guarantee Program for the Government of Israel. However, the State Department felt that it was premature to discuss the Israel program and therefore they did not provide a witness for the Subcommittee.

Since the Cargo Preference laws provide a significant amount of cargo for American flag vessel owners, it is imperative that we make sure that these laws are being complied with in terms of any cargo shipments.

I look forward to hearing from the witnesses today as they discuss shipping issues related to American efforts to help rebuild the country of Kuwait. Now that Congress has approved the Israeli Loan Guarantee Program, it is timely to review this program to assure that American companies get a fair opportunity to provide shipping for any goods acquired pursuant to the guarantees.

I also hope that our witnesses will be able to clarify for the Subcommittee the current policy with regard to the military's use of vessels for shipping Government-owned cargo or other commodities being shipped for the military. For more than thirty years the "Wilson/Weeks Agreement" has set Government policy for the use of Government vessels versus privately owned vessels. It is appropriate that the Subcommittee assure that this agreement is being followed with regard to any current shipping activities.

Thank you, Mr. Chairman. This should be a very informative hearing.

Mr. LIPINSKI. Our first witness of the morning, the Honorable Helen Bentley. Mrs. Bentley, it is a pleasure to see you here this morning.

Mrs. BENTLEY. Thank you, Mr. Chairman.

Mr. LIPINSKI. The floor is all yours.

Mrs. BENTLEY. I will try and be as brief as I can but forgive me—

Mr. LIPINSKI. That we will appreciate very much.

Mrs. BENTLEY. I am very long-winded on this subject.

Mr. LIPINSKI. That we know.

Mrs. BENTLEY. Before we begin, Mr. Chairman, there is a new page five that has been circulated to go in place of the old one in my statement.

Mr. LIPINSKI. Do we have copies of that new page five?

Mrs. BENTLEY. Yes. They have been circulated.

Mr. LIPINSKI. It has been circulated?

Mrs. BENTLEY. Yes, it has been.

Mr. LIPINSKI. Congressman Bateman, does your side have a copy of that?

Mr. BATEMAN. It has not been located.

Mrs. BENTLEY. All right. Well, I know that they have brought the whole thing down so—

#### STATEMENT OF HON. HELEN BENTLEY, A U.S. REPRESENTATIVE FROM MARYLAND

Mrs. BENTLEY. All right. Let me start, Mr. Chairman, by thanking you, Chairman Studds, and Mr. Bateman, the ranking minority member, and all the members of the committee for holding today's second chapter on cargo preference issues. It is important that we pick up from the September 30 of last year's cargo preference oversight hearing at which time the committee heard testimony from several of the Federal agencies that allegedly were violating those laws. Today we will have the opportunity to hear from the Maritime Administration and the industry and focus on the problems that the industry is encountering with these same agencies.

The industry has taken some hard hits lately, Mr. Chairman. These have come from the various Federal agencies that have attempted to evade and circumvent compliance with the cargo preference statutes. But today I want to begin by focusing on the Maritime Administration, the very agency that is responsible for promoting the industry and which the Congress empowered with the oversight responsibility for the Cargo Preference Act of 1954, Public Law 664.

Mr. Chairman, getting right to the heart of the matter, during the fall of 1991, persistent complaints were coming to me from the industry that the Maritime Administration was not properly exercising its cargo preference enforcement responsibilities. So I began corresponding with various Federal agencies, Defense Security Assistance Agency, Military Sealift Command, the Agency for International Development of MARAD, about the various issues brought to my attention. Through the exchanges of correspondence with these agencies, I learned that in the fall of 1991 MARAD, on its own and without a request from the sponsoring Federal agency, determined that a program which previously had been determined by MARAD to be subject to cargo preference now is determined to be exempt from the law. The program involved, the Southern Region Amendment transfers, SRA, had generated millions of dollars of U.S.-flag revenues. Now, MARAD's new determination jeopardizes future U.S.-flag revenues from this program.

I subsequently learned that MARAD had issued an internal legal interpretation which determined that since the law authorizing SRA donations contained the language, "Notwithstanding any other provision of law," the SRA program was not subject to Public

Law 664. In this regard, I am providing for the record copies of correspondence with the Maritime Administration dated March 3 and April 9, 1992, reflecting this internal interpretation. I am also submitting for the record a copy of MARAD's 1991 Cargo Preference Report where it states that SRA cargo transfers are not subject to cargo preference.

To be frank, Mr. Chairman, I was shocked to learn about this situation. However, after reviewing the aforementioned MARAD cargo preference law, I believe that the "notwithstanding" issue was a minor problem even though MARAD would not explain to me why they unilaterally decided to render the questionable opinion.

On February 4 of this year I once again wrote to MARAD about a serious situation involving the imposition by AID of loading, delay, assessment, LDA penalties on Public Law 480, Title II Liner Shipments. Since the use of these provisions as a basis for determinations of nonavailability is not appropriate under Public Law 644, I requested that MARAD inform AID that it must cease imposing the LDA provisions. By letter dated February 18, I received a response from the acting Maritime Administrator informing me that MARAD is powerless to require AID to remove the LDA provisions from this program because it is not subject to Public Law 664 as it contains the notwithstanding language.

Again, I did not expect to receive such a response. However, it clearly exposes several serious issues. Since the Section 202[a] shipments of Public Law 480, Title II program are not subject to Public Law 664 according to MARAD, under what authority does MARAD finance the incremental differential for this program? The only authority for such financing is provided in Section 901[d] of the Merchant Marine Act of '36. This authority only applied to programs which are subject to cargo preference. Therefore, MARAD, according to MARAD, appears to lack the authority to finance any freight differential for this program. Yet, it still has provided the financing.

I will be extremely interested in MARAD's response on this issue because either MARAD's legal opinion is faulty, as I believe it is, and should be retracted, or MARAD officials have been guilty of misappropriation of funds, a very serious offense. MARAD cannot have it both ways.

Another serious issue raised by MARAD's February 18 letter to me concerns reliability of its 1991 annual report on cargo preference. Since it already has shown the SRA program not to be subject to cargo preference because of its notwithstanding language decision, why has MARAD not reflected in this report the Public Law 480, Title II, Section 202[a] program shipments as exempt from cargo preference? How many other programs reflected in the report is being subject to Public Law 664, contain the notwithstanding language, and, therefore, according to MARAD, also are exempt from cargo preference?

Mr. Chairman, I am very disturbed by this situation. If we cannot rely on MARAD to provide the committee with reliable information, how can we assist the industry? At the close of the September 30 hearing, Mr. Pickett asked then MARAD Administrator Captain Leback what, in his opinion, might best be done to im-

prove the cargo preference laws so that they would have the policy impact of requiring the carriage on American bottoms the way the committee has intended. While Captain Leback mentioned the "notwithstanding" issue, the committee was not requested to urgently act on this matter as it was casually mentioned in the four points he listed. Yet, not one clue was provided to the committee that this language was in the Public Law 480, Title II, Section 202[a] program, and that it excluded approximately one million tons of cargo from cargo preference that previously had been embraced by the law, and our liners or ships need that cargo.

Mr. Chairman, I would suggest that MARAD has not been totally honest with the committee in the past and is not now. Its Administrator will not come forth and demonstrate the urgency that loopholes, such as the notwithstanding language, pose to cargo preference by placing them in a tonnage perspective. And how can any of us or the industry fully place these problems in their proper perspective?

Mr. Chairman, I have other serious concerns about MARAD's cargo preference oversight activities that I will address directly with the agency witness who is appearing before the committee today. However, there are a few other matters I would like to highlight for the committee.

One of the topics reviewed at the September 30 hearing was a donation of U.S.-owned equipment under the Conventional Forces in Europe Treaty Implementation Act of 1991, generally known as CFE transfers. The committee went into great detail with the DOD witnesses about the application of Public Law 664 to these donations. These are giveaways. I believe the CFE matter is one of the clearest examples of deliberate cargo preference evasion. DOD refused to accept specific Court decisions and the committee's position that these donations clearly are subject to Public Law 664.

Unfortunately, at this time more than 50 percent of the U.S.-donated equipment already has been transported—already has been transported by foreign-flag vessels. And there virtually is no chance that U.S.-flag vessels will transport any of these donations unless something dramatic occurs. Once again, the statute, the committee, and the industry have been taken to the cleaners by DOD's strong arm tactics. We cannot let this continue.

Another DOD area that is not in full compliance with cargo preference is the DOD Humanitarian Assistance program. According to the DOD witnesses at the hearing, they believed that these shipments, known as Meals Ready to Eat, MRE, were not subject to any cargo preference statute. Subsequent to the hearing, Public Law 102-484, the DOD Authorization bill, was enacted which provided that both the 1904 Act and Public Law 664 apply to DOD Humanitarian shipments. It is my understanding that some MRE shipments still are moving on foreign-flag vessels because DOD believes that only MRE shipments financed with Fiscal Year '93 funds are embraced by cargo preference.

Therefore, according to DOD, MRE shipments that are now moving and which were embraced by prior years' financing are not subject to cargo preference even though the Congress was not making a new statute but merely clarifying existing law to make

crystal clear to government agencies its intent. Again, a clear flaunting by DOD of its disdain for cargo preference.

Another matter which the committee attempted to review was what you had already referred to, Mr. Chairman, on Israel, and I won't go into that. I have written to the Department of State on it, and I have been informed that the Administration was not going to place binding U.S. procurement and shipping provisions in the transfer of funds agreement transmitting the initial two billion for assistance.

In a letter on January 19, the Acting Assistant Secretary of State informed me that my understanding had been correct. Now, however, he placed the blame for the absence of buy-American—and this is what I am concerned about, Mr. Chairman—and the absence of buy-American and ship-American provisions on the Congress since no mention was specified in the empowering legislation regarding them. He also stated since the actual transfer of funds agreement was silent about cargo preference, it further supports his position that the statute did not apply.

I find it an outrage that the State Department takes this position. It knows well that the issue was never raised because by law—existing law the Congress did not believe that it needed to be. Public Law 664 covers all such aid programs, and that law is nearly 40 years old next year and does not need to be specifically included with each program as it is developed. Public Law 664 is operative unless it is specifically exempted, and nowhere in this empowering legislation is it exempted. Worse still, I think that the senior staff of State went on to cleverly craft the transfer agreement so that it would mimic the original Israeli cash transfer agreements of '78 to '83 period that the U.S. District Court has determined to be exempt from Public Law 664.

By letter of February 17, I requested the new Secretary of State to enter into a side letter or side agreement much the same as was previously done with the Government of Israel for the U.S.-flag bulk carriers when the initial cash transfers occurred. I believe that if sufficient support is provided in the Congress for the concept of a side agreement providing for U.S.-flag liner vessels, it would be acceptable to Israel since there would not be an adverse cost impact due to the fact that both U.S.-flag liner carriers and the Israeli national lines charge identical freight rates from the U.S. to Israel.

I brought this matter to your attention for several reasons. First of all, we should be concerned in the Congress that the loan guarantee type of assistance may proliferate as the cash transfer concept has and take the place of traditional U.S. foreign assistance initiatives that are embraced by Public Law 664. The judicial foreign aid program means purchases in America, jobs for American workers and farmers, and cargoes for U.S.-flag ships.

I can tell you, Mr. Chairman, I was around when they broke that—when they untied all the aid programs to the United State of America. I was covering it for the Baltimore Sun then. I well remember when it took place in the Vietnam period, and Japan is the one who convinced us that we should untie. And ever since then, our manufacturing, our industries have been going down. And I can tell that today, and I am sure you get it in your home—

every one of these members here—I know I am getting it—that the average American taxpayer is demanding that American's benefit if we are going to continue to give foreign aid. Otherwise, my constituents say no foreign aid.

Second, the Congress should be very concerned that the State Department is assuming—is taking administrative license and thwarting the intent of Congress when it passes legislation. Third, we should secure broad support in the Congress for the concept that the side letter type of agreement must be executed this time to provide for 50 percent, just half of it, by U.S.-flag vessels of the commerce that is generated as a result of this assistance.

Finally, the Congress should state its position to the Administration that future transfer of funds agreement for the remaining eight billion in loan guarantees should contain mandatory buy-American and ship-American provisions. If the Clinton Administration is sincere in its desire to create U.S. jobs, and I believe they are, insertion of these provisions in the remaining eight billion transfer of funds agreement with Israel will create at a minimum more than 200,000 jobs in this country according to estimates from the Congressional Research Service. In the absence of these provisions, these jobs will be created overseas with U.S. taxpayer funds.

There is one final problem that I would request the committee to consider. This concerns the cumbersome and generally ineffective process that the U.S.-flag carriers objected to when they attempt to secure support from our government to correct discriminatory practices inflicted upon them by our trading partners. I know of a case that is especially distressing as it involved discrimination that is applied by the Government of Kuwait.

In a letter dated February 2, I requested the Secretary of State to redouble our government's efforts with Kuwait to remove the discriminatory aspects of its Resolution Number 47/86. This resolution provides in part that the United Arab Shipping Company is accorded the right of first refusal for Kuwait's project cargo. This results in discrimination against U.S.-flag vessels and is completely at variance with Kuwait's promise to fully include U.S. companies in the rebuilding effort for Kuwait. This particularly is distressing to the U.S.-flag merchant marine which played a critical role in the recent Gulf War effort.

If this discrimination were a recent event, it would be bad enough. However, the State Department has been aware of its existence for nearly two years, almost since the end of the Gulf War. Clearly, our process for eliminating such discrimination is far too slow for the losses sustained by the remaining U.S.-flag vessels serving such countries, and these losses are never recouped. We must seriously consider enacting more effective and reactive legislation to swiftly impact foreign nations that discriminate against our vessels. Such legislation would receive overwhelming support, Mr. Chairman, in the Congress, with the American people.

I know my statement has been lengthy, but these are important issues that must be addressed and resolved, or, quite simply, the already shrinking American merchant marine will disappear.

Before I conclude, members of the committee, I would like to take just one more moment. You touched on it, Mr. Chairman and Mr. Bateman, on H.R. 57, the Merchant Marine Utilization and



Preference Act of 1993. This legislation is intended to replace the 1954 interdepartmental memorandum agreement known as Wilson-Weeks Agreement. Between the Secretary of Defense and Secretary of Commerce, my legislation would set limits on the number of government-owned ships to be operated by DOD in peacetime and establishes an order of priority for obtaining additional merchant shipping when required.

In accordance with our national maritime policy as set forth in the 1936 Act, the emphasis is on maximum reliance on privately owned U.S.-flag shipping. Foreign-flag shipping would be allowed only when U.S.-flag ships are not available and then only to the extent necessary to meet urgent military requirements.

Mr. Chairman, I know H.R. 57 as presently drafted raises some concern for a segment of the U.S. operators. I want to assure them and my colleagues on the committee that the purpose of my bill is to present a starting point for discussion. I believe strongly that modernizing the Wilson-Weeks Agreement and codifying it into law will aid greatly the U.S. merchant marine. It will control the use of government-owned ships and the employment of foreign-flag vessels as was witnessed during Operation Desert Shield and Desert Storm.

That concludes my statement, Mr. Chairman, and I know it was a little lengthy, but I think we had some important points. We need to see how the bureaucracy is continuing to defy the laws that this body here has passed, and we need to get at it. Thank you, Mr. Chairman, and members of the committee.

[Correspondence with MARAD can be found at end of hearing.]

Mr. LIPINSKI. Congresswoman Bentley, I appreciate your statement. I think you bring up many very interesting points, things that this committee will certainly go into. I want to invite you to join the panel. I would like to simply say also that I don't believe the people who are appearing here today from the Maritime Administration were the people who had the ultimate decisionmaking ability in the prior administration. And as we all know, we are in a transition period. The new people appointed by President Clinton have not come on as of yet, so I am hoping that the sins or the alleged sins of the past will be corrected underneath this new administration.

Mrs. BENTLEY. I do too.

Mr. LIPINSKI. But, Mrs. Bentley, you are invited to join us on the panel, and our next panel is invited to come up to the table.

Mr. LIPINSKI. Our next panel is composed of three individuals. The point person is the Honorable Richard E. Bowman, the Acting Maritime Administrator. He is accompanied today by Nan Harllee and Edmund Sommer. Welcome, one and all, to you. I know that you have a prepared statement you are going to present. If there is anything you would like to comment on pertaining to what Mrs. Bentley had to say at the end of your prepared statement, you will be welcome to do so. Good morning to all of you.

**STATEMENT OF THE HONORABLE RICHARD E. BOWMAN, ACTING ADMINISTRATOR, U.S. MARITIME ADMINISTRATION; ACCOMPANIED BY NAN HARLLEE, ASSOCIATE ADMINISTRATOR FOR MARKETING, U.S. MARITIME ADMINISTRATION AND EDMUND T. SOMMER, JR., ACTING CHIEF COUNSEL, U.S. MARITIME ADMINISTRATION**

**STATEMENT OF RICHARD BOWMAN**

Mr. BOWMAN. Thank you, Mr. Chairman. I very much appreciate the opportunity for the Maritime Administration to present our response to the questions you raised in your letter of invitation.

U.S. cargo preference programs are part of the overall statutory scheme to support the privately owned and operated U.S.-flag merchant marine. They require, depending on the program, various percentages of carriage that has to be carried on U.S.-flag vessels. This is a very important program, Mr. Chairman, for the maintenance of the U.S. merchant fleet. Our nation continues to require militarily useful flag vessels.

As this committee knows well, the ships that carry these cargoes provide important jobs for American seafarers. Cargo preference guarantees the availability of cargo to U.S.-flag ships and is important to the financial viability of the U.S.-flag operators. It is also important as well in ensuring the availability of U.S.-flag ships in time of national emergency, for the support of our military, and also the resupply in the United States. It also assists in ensuring the supply of merchant seamen to crew our laid-up fleet.

In your letter of invitation, Mr. Chairman, you requested that the Department of Transportation express its views on cargo preference as it relates to the Government of Kuwait's efforts to rebuild its country and to the Government of Israel's use of U.S. goods and services in connection with the five-year, ten billion loan guarantee program passed by the Congress last year.

I must say, Mr. Chairman, that MARAD has been extremely disappointed that the Government of Kuwait has avoided significant utilization of U.S. carriers in the rebuilding of its country. The response to our attempts to secure Kuwait's reconstruction cargo has been particularly disheartening given the major role that the U.S. military played in helping to free Kuwait from Iraqi aggression and the role the U.S. merchant marine played in carrying military cargo to support that effort.

U.S.-flag ships have been virtually excluded due to a clause in Kuwait's Council of Ministers' Resolution 47/86 which gives the right of first refusal to carry this Kuwaiti government-controlled cargo to the United Arab Shipping Company. For almost two years, MARAD has been working with the Department of State to encourage Kuwait to rescind this discriminatory policy. MARAD and the U.S. Embassy officers met many times trying to convince the Government of Kuwait to change this policy. The Ambassador to Kuwait was personally involved.

As recently as January 6, Ambassador Guinine, meeting with Kuwaiti government officials, relayed a letter from the former Maritime Administrator denying Kuwait a retroactive waiver to carry export/import cargoes on Kuwaiti-flag vessels. MARAD's denial of the waiver was based on Kuwait's continued discriminato-

ry treatment of U.S.-flag vessels. Unfortunately, these efforts have produced no result.

In another matter, Mr. Chairman, we are concerned about the absence of cargo preference requirements in the program for loan guarantees to Israel that was established by Title VI of the Foreign Operations Appropriation Act for Fiscal Year '93. These guarantees provide a significant economic benefit for Israel, and the law anticipates that the amount of U.S. goods and services purchased by Israel will substantially increase as the Israeli economy improves. We, therefore, see the potential for increased use of U.S. goods and services, including U.S.-flag vessels, resulting from this program or the improved economic climate in Israel.

In this regard, on December 3, 1992, the former Administrator wrote to the Assistant Secretary of State for Near Eastern Affairs regarding cargo preference language in the 10 billion dollar loan guarantee program. The Maritime Administration received a response on January 6 in which the State Department pointed out that the authorizing legislation did not contain any cargo preference requirement and further stated that most individual projects could not be identified separately. With your permission, Mr. Chairman, I have copies of that correspondence for the record.

Mr. Chairman, you also requested the Department's views on H.R. 57, introduced by Congresswoman Bentley, to amend the Cargo Preference Act of 1904 in Title X of the United States Code, to clarify the preference of U.S.-flag merchant vessels in the carriage of Department of Defense cargoes. The 1904 Act requires only U.S.-flag vessels to be used in the transportation by water of supplies bought for the Armed Services unless the freight charge for those vessels is excessive or otherwise unreasonable. H.R. 57 would revise the 1904 Act to update and codify the Wilson-Weeks Agreement of 1954 between the Secretary of Defense and the Secretary of Commerce, dealing with the utilization, transfer, and allocation of merchant ships for use by DOD.

The Administration is developing a position on this bill. The Department believes that before any legislation is considered by this subcommittee, the Secretary of Transportation should be given the opportunity to review the important issues raised in H.R. 57 and attempt to resolve them through the collaborative process within the Administration. I might add, Mr. Chairman, that I have discussed this with the Secretary. He recognizes the importance of these issues and fully intends to have discussions with the other agencies. The guiding principles are to preserve the military's flexibility to meet international crises and to proscribe competition by the government with the commercial sector.

As was noted at this subcommittee's first oversight hearing on cargo preference issues, MARAD takes its mandate to monitor the implementation of cargo preference laws by other government agencies very seriously, including our authority to establish rules under which preference programs operate. I might add that every year we provide a report to the Congress that lays out very clearly what the cargo preference compliance has been for every agency in the United States Government. At his Senate confirmation hearing, Secretary Pena stated his support for our nation's cargo preference laws, and as I indicated, I know very clearly that he will be

working with us in making sure they are met. MARAD will continue to aggressively monitor compliance by both military and civilian agencies.

Mr. Chairman, that completes my statement, and I will be glad to answer any questions that you and the subcommittee may have. Mr. Chairman, I think it might be useful if, since this notwithstanding question has been one that has been in so many people's minds, with your agreement, if I could have our chief counsel address that at the outset.

[Statement of Mr. Bowman can be found at end of hearing.]

Mr. LIPINSKI. You certainly have my permission to do so.

Mr. SOMMER. Thank you, Mr. Chairman. There clearly is a need to clarify MARAD's position regarding the notwithstanding language, and that misunderstanding may well be due in part to...

Mr. LIPINSKI. Excuse me. Could you pull the microphone a little closer so we can all hear this?

Mr. SOMMER. Thank you. The obvious misunderstanding regarding MARAD's position on the notwithstanding language may clearly be our fault, and, if so, we apologize for any confusion. But very simply put, notwithstanding is not a blanket exemption of this statute or any other—I am talking about Title II—or any other statute which contains the notwithstanding language from the application of appropriate laws. All it does and particularly in connection with Title II is provide the Administrator of AID with the authority to waive cargo preference or any other statute if in his view it is necessary to do so to provide the timely relief cargoes that are called for under the statute.

It is not a blanket exemption. It does not waive cargo preference. The cargo preference laws apply. So far as we know, the Administrator of AID has not yet found it necessary to waive cargo preference. If the Administrator did find it necessary, we, of course, would want to be notified in advance and given an opportunity to work with carriers to see if that was necessary.

Mr. LIPINSKI. Do we have any further comments from the panel before we start the questioning?

Mr. BOWMAN. No. I think that is fine. Thank you, Mr. Chairman. We are prepared to respond at this point.

Mr. LIPINSKI. I want everyone to clearly understand that the first couple of times we go around you get to ask one question, and I don't want the time to be any longer than five minutes for the question and the answer. And to show you how gracious I am as Chairman, the first individual we will recognize is the ranking minority member, Mr. Bateman. Mr. Bateman.

Mr. BATEMAN. Thank you very much, Mr. Chairman. Mr. Sommer, I want to go back over the statement you just made with reference to the notwithstanding clauses and their legal implications.

Mr. SOMMER. Yes, sir.

Mr. BATEMAN. What I understand you to say is that they do not abrogate the cargo preference laws. They do, however, it appears, grant some discretion on the part of various agencies to avoid the normal provisions or effect of the cargo preference laws if they make certain findings and exercise certain discretion. Is that a fair summary of what you said?

Mr. SOMMER. That is exactly our position. Yes. Those findings, of course, would have to document that a waiver of any applicable statute was, in fact, necessary.

Mr. BATEMAN. Well, and I am intrigued by your statement that the Agency for International Development has not made any findings or exercised any discretion to evade cargo preference laws. It is my understanding that they, indeed, have done that. Am I in error?

Mr. SOMMER. I certainly would be willing to stand corrected, but to our knowledge, they have not waived on any Title II shipment the application of cargo preference laws.

Mr. BATEMAN. So the notwithstanding clause as it relates to the Agency for International Development and its cargo has not reduced or has not resulted in any diversion of cargo that should have moved on American-flag vessels because of the cargo preference laws?

Mr. SOMMER. Not to my knowledge.

Ms. HARLEE. If I could just embellish on that a little bit, I think what Mr. Sommer is saying is that the AID Administrator has not waived cargo preference in Title II. The agency, however, in other programs and particularly in the loans and grants program, has given waivers for nonavailability of U.S.-flag tonnage, some of which we have taken exception to. So we would say that U.S.-flag carriers may have lost certain cargoes in other AID programs, that we didn't agree with AID in doing that, but there was no finding in any case that the preference laws do not apply.

Mr. BATEMAN. Well, as I understood the legalistic position, it is that he has no authority to waive the applicability of the law. He only can exempt cargo based upon certain findings and based upon those findings exercise the discretion not to apply that cargo or have that cargo bound by the provisions of the cargo preference law. But without extending this beyond my five minutes, Mr. Chairman, my concern here is, and I hope that the witnesses will take this message to whomever, this committee is going to be a lot more concerned about the practical results than the legalisms of whether they waive the whole smear of cargo preference. It is the practical result we are interested in.

My further observation is that there is obviously a desire on the part of any number of agencies to minimize cargo preference because it impacts upon the cost of the operation of their programs. They have an incentive to avoid the application of the cargo preference laws wherever they can. If that were not the case, we wouldn't need cargo preference laws. So we are going to be interested in bottom lines and practical results, not whether or not there is a legal theory that preserves cargo preference intact theoretically while in the actual marketplace, in the world of commerce, it is being avoided.

Mr. LIPINSKI. Thank you very much, Mr. Bateman, and I certainly echo those sentiments you expressed to the witnesses. Congressman Green.

Mr. GREEN. Thank you, Mr. Chairman. What are the penalties if a Federal agency may not waive the cargo preference but they are exempting it? Are there any penalties at all, and if there are not,

who enforces those penalties and should there be if we don't have any?

Mr. BOWMAN. As such, we do not have any penalties for non-compliance. The only course of action we have is annually our report to the Congress on compliance, that lays out for Congress who complied and what the problems may have been. We inform the agencies when we are reporting that there is a shortfall. We report the shortfall to Congress so that Congress knows the agencies haven't followed the intent of the statute and the intent of Congress.

Mr. GREEN. OK. So that is the only enforcement. For example, if you have taken exception with AID providing an exemption and that is your report to Congress—

Mr. BOWMAN. Yes, Mr. Congressman, that is it. That is all we have.

Mr. GREEN. Do you think your agency or your Administration—with either one it would be the—have enforcement—some authority other than just reporting to Congress?

Mr. BOWMAN. Whether we should have?

Mr. GREEN. Yes.

Mr. BOWMAN. Well, that is an issue that, without making any judgment at this point, I would certainly like to discuss a little bit more with our new Secretary and the new officers. I think our view with regard to at least certain cargoes, some of the grain cargoes and some of the others, is that under Section 901(b)(2) we have authority to proscribe certain requirements so that the other agencies don't put unnecessary restrictions or costly problems on top of the carriers. We have the right to set regulations. However, if those regulations aren't followed we are limited in how far we can follow it.

I think that is, as suggested by the Chairman, one of the issues that we will make sure that the new people, when they arrive, are cognizant of, and the fact that the committee is concerned as well as the staff at the Maritime Administration.

Mr. GREEN. OK. Let me give you an example, and then I will use up my five minutes, Mr. Chairman. I have understood that, for example, the shipments to Somalia—there have been unusual requirements placed on U.S.-flag vessels that may not be the same requirements on other flag vessels. Do you have any information on that for the committee?

Mr. BOWMAN. I am not aware of particular ones with regards to Somalia at the present time—restrictions that were placed on.

Mr. GREEN. OK. Are there certain requirements for U.S.-flag vessels that other vessels did not have to comply with?

Mr. BOWMAN. I am not aware of those. If you are talking about the penalty provision that was discussed with one of the carriers and now has come up in the last week, with regard to an Ethiopian shipment of cotton, it is one that has just come to our attention. It is a penalty that was put on by AID. We did not know about it initially. When we heard about it, we were concerned. We communicated with them. We told them we thought they were out of line, that it was inappropriate. We felt that putting a penalty provision on a carrier when, in fact, the carrier's delays might be related to off-loading of a prior cargo that was a government-impelled cargo

was unfortunate. We were opposed to it. We indicated we wanted them to sit down with the carriers before they proceeded with that. Unfortunately, we were unable to get the carrier and the AID people together. We now have a meeting scheduled between the carriers and ourselves and AID to deal with that issue.

One just came to our attention yesterday, I have a letter that the staff has prepared already for me to send to the AID people in which we are going to object strenuously to a bonding requirement and other penalty provision. I think it is wrong. We think that these are problems that can be resolved without putting penalty provisions on our carriers. We think we can work them out between ourselves and the carriers and the other agencies if we know about them in advance.

Mr. GREEN. I would hope you would keep the committee apprised of the results and what you are doing. Thank you.

Mr. BOWMAN. Thank you. We will do so, sir.

Mr. LIPINSKI. Thank you, Mr. Green. The Chair now recognizes Congressman Kingston.

Mr. KINGSTON. Thank you, Mr. Chairman. Mr. Bowman, the \$10 million loan guarantee to Israel is a huge sum of money, larger, in fact, than most state budgets, and yet it doesn't have the cargo preference clause. Is that usual? How does that happen? Do you guys get involved in the negotiations at all, or is that just the way it is done?

Mr. BOWMAN. Well, that is the way it was done. The Maritime Administration and the Department of Transportation were not involved in any of the actions when those agreements were put together. They were agreements negotiated between President Bush and the Israelis, and then when the appropriation was enacted, there were no particular requirements. On the other side, I think Congress made it clear that the United States was supposed to benefit as a result of those guarantees.

We felt so strongly about it that, recently, we indicated in a letter to the Israeli Government that we wanted to sit down with them and find a way to negotiate an agreement that would provide for carriage by U.S.-flag carriers of some of the moneys that are included in the \$10 billion loan guarantee. Now, that is going out at about \$2 billion a year over the next five years. We expect and certainly would hope, to the extent that there are expenditures in the U.S., that they will sit down with us, and come to grips with providing a side letter agreement for carriage on U.S.-flag ships. Mr. Chairman, if you would like, I would be glad to make my letter available to you for the record.

Mr. LIPINSKI. Yes. I would like to have that for the record please. [Letter to Israel may be found at end of hearing.]

Mr. KINGSTON. Also, Mr. Bowman, I believe I heard Congresswoman Bentley say that this type of loan arrangement, not specifically this type but other type loans to other countries will probably be happening again in the future. With the change in Administration and the emphasis on new job creation, do you see you guys playing a more active role in terms of protecting U.S. interests particularly as respects new jobs?

Mr. BOWMAN. Well, I would certainly hope that protecting new jobs would include this maritime industry. The Secretary, as many

may know, has a meeting on the 2nd of March with the industry to talk about the conditions in the industry. I would hope that questions such as you raise will be pursued between the industry and with the Secretary as we move forward to see how we can come to grips with the difficulties they have been facing. Some of these are a result of many of the constraints we are talking about today.

Mr. KINGSTON. Good. Thank you very much.

Mr. LIPINSKI. Thank you, Congressman. The Chair recognizes Congressman Hastings.

Mr. HASTINGS. Thank you, Mr. Chairman. Very briefly, Mr. Chairman. Mr. Bowman, who has the authority to cut off delivery of cargo to rebuild Kuwait?

Mr. BOWMAN. We certainly don't. I don't know who would.

Mr. HASTINGS. The State?

Mr. BOWMAN. I don't know, Mr. Congressman, who has that authority.

Mr. HASTINGS. Well, you see, I reduce things to its simplest terms, and you will pardon my naivete, but it just seems to me that somebody ought to be recommending that they don't get anything unless they comply with our request. And I am hearing you say that you don't even know who has authority to do that. I know Congress would, through legislation, but I am just curious. Can we in the morning, is there someone in the realm of wherever that can say no more cargo goes to Kuwait to rebuild?

Mr. BOWMAN. I don't know who would have to say that, but I want to make sure that there is no—

Mr. LIPINSKI. Well, let me just interrupt for one moment though. I am sure that the President of the United States—

Mr. BOWMAN. Yes.

Mr. LIPINSKI [continuing]. could do that.

Mr. HASTINGS. Yes. I don't have any—when I said state, Mr. Chairman, I had reference to obviously the President having authority.

Mr. LIPINSKI. Excuse me.

Mr. HASTINGS. All right. The request was made of you to comment on H.R. 57. Part of your response here today was that the Administration was developing a position. When can we expect it?

Mr. BOWMAN. I don't know. I expect shortly. I think that would be one of the issues that will be part of the Secretary's overall look at the maritime industry. I think that that is what would be looked at.

I would add, if I may, Mr. Chairman, that we happen to view Wilson-Weeks as very important. We think it has set up some very important standards with regard to the carriage of cargoes on U.S.-flag ships and the priority system it set. A number of us were fortunate enough to have had a chance to work on the MOU that was developed between us and the Department of Defense on the use of the laid-up fleet. We re-embraced Wilson-Weeks in that MOU. I think, as we understand, there are some differences, as the Congresswoman has expressed. We are anxious to take a hard look at that to make sure it stays in place.

If I may, Mr. Chairman, come back to your earlier question. With regard to Ex-Im bank loans, to the extent that the Kuwaitis have asked for waivers, we refused to grant them so that the Ku-



waitis could take those goods on Kuwaiti-flag vessels. So at least in that area, we have held firm.

Now, there is another thing that should be understood. The majority of cargoes that Kuwait is acquiring are not cargoes that are subject to preference laws. What we are talking about in the case of Kuwait is that they haven't even given our carriers a chance to participate. They have just locked them out and essentially given their country 100 percent cargo preference for United Arab Shipping. We think that is just patently unfair, and we don't want to sit still for it.

Mr. HASTINGS. All right. Mr. Chairman, she hasn't requested it, but I yield back any time that I may have to Mrs. Bentley who knows a whole lot more about this subject than do I.

Mr. LIPINSKI. Before I recognize Mrs. Bentley, I simply want to say that in regards to this Kuwait situation, it is their money. They are buying things in this Country, and they are shipping them on whatever ships they want to ship them on. They simply made a pledge during the course of the war that they were going to utilize our ships. Correct?

Mr. BOWMAN. Yes, sir.

Mr. LIPINSKI. OK. So they are not living up to their pledge, but that is all they are not doing?

Mr. BOWMAN. That is correct. And just as you have stated, they have given preference to United Arab Shipping vessels.

Mr. BATEMAN. Mr. Chair?

Mr. LIPINSKI. Certainly, Mr. Bateman.

Mr. BATEMAN. Would you indulge me for just a minute longer?

Mr. LIPINSKI. I definitely will.

Mr. BATEMAN. One of the things that very seriously concerns me about the Kuwaiti aspect of this is that I sat here on this committee. I even went to the Near East. I met with the representatives including the Chief of State of Kuwait when they wanted to reflag their vessels under the American flag so they would not be as endangered in the course of the war between Iran and Iraq. It galled me at the time that the remedy that they sought and that the United States Administration accepted was to reflag their vessels as opposed to having them charter American-flag vessels. But because of the national security implications of it, I didn't squawk very loud or long or anything of the kind.

It especially in that context galls me more than I can say, that they are not honoring the pledge that was made whether or not there be a legalistic redress that someone may have. And it is my intention, this having been brought very forcefully to my attention this morning, to author a letter to the Kuwaitis expressing perhaps even more clearly and better what I have expressed today. Thank you.

Mr. LIPINSKI. Thank you, Mr. Bateman, and I would certainly be happy to join you in that letter. The Chair now recognizes Mrs. Bentley.

Mrs. BENTLEY. Thank you, Mr. Chairman. I want to thank Mr. Hastings for offering the balance of his time. I will make it very quick. I want to touch mostly on the notwithstanding issue and the discrimination. Mr. Sommer, how long have you been with General Counsel's office at MARAD?

Mr. SOMMER. Six years.

Mrs. BENTLEY. Six years? OK. When did notwithstanding become part of the language in the different pieces of rules and regulations such as on—

Mr. SOMMER. My first exposure to it was in 1987, I believe, in connection with an AID statute providing for disaster assistance, and that had a similar notwithstanding provision in it. We argued, I think, forcefully and effectively, but unfortunately, without success that notwithstanding language did not disapply the cargo preference statutes in all cases. That was taken to Court, and the Court found that it did. It was a somewhat broader statute. It did not have the language that Title II or Section 202 does that requires a finding—and I apologize—I don't have the language right in front of me—oh, here—that the Administrator must determine that a waiver is appropriate to respond to the emergency. It is that language in Section 202 upon which we rely in our interpretation that it is not a blanket waiver of Public Law 664 or any other statute.

Mrs. BENTLEY. But it is in this 1990 farm bill?

Ms. HARLEE. Yes.

Mrs. BENTLEY. You are aware of that?

Mr. SOMMER. Yes.

Mrs. BENTLEY. And it says notwithstanding any other provision of the law. They can do what they want basically. Is there any exchange of letters between MARAD and agriculture, any of these, opposing this? I am aware of the Court provision. I am aware of that. But I am also asking whether or not you all opposed it at any point? Did you oppose it in Court?

Mr. SOMMER. This has not actually become an issue other than in correspondence with yourself and with others. As we have said, AID, to our knowledge, has not used this language or this provision to waive the application of cargo preference. But if they should take it in their mind to use this language to waive Public Law 664, we would certainly want to discuss it with them.

Mrs. BENTLEY. But when the Public Law 102-484 the Defense Authorization bill was enacted, it said that these were subject to 1904 cargo preference and Public Law 664, and the State would be responsible. AID and USDA subsequently met with the flag carriers but were vague as to the cargo preference application to these cargoes. Since both statutes were stated in this legislation and in the absence of any government-owned vessels, privately owned U.S.-flag vessels were entitled to transport 100 percent of these shipments. Has MARAD sent letters to DOD and AID since this legislation was passed explaining the cargo preference requirement and discussing MARAD's role for monitoring these cargoes? Do we have any writing on this?

Ms. HARLEE. We have written to the Department of Defense indicating that we believed that—I believe we wrote on the CIS cargoes—preference should apply to those. The Department of Defense wrote back to us that the notwithstanding clause exempted those cargoes.

Mrs. BENTLEY. And that is the Russian law. Right?

Ms. HARLEE. Right.

Mrs. BENTLEY. I think we need to become harder on this stuff, and I think we need to wipe out "notwithstanding". You have in

your annual report that SRA cargo transfers are not subject to cargo preference. You are saying it. MARAD is saying it. In a letter to me on April of last year, Mr. Leback says, "As noted in an enclosure to our letter of March 3 that the phrase "notwithstanding" precludes the applicability of cargo preference." And in another MARAD paper you say cargo preference does not apply to these programs containing the statement "notwithstanding". My question to MARAD is, and, Mr. Chairman, I think this committee really needs to get on this, is let us eliminate "notwithstanding" altogether.

Ms. HARLLEE. And we would certainly applaud that, Congresswoman. I would like to point out one thing on the SRA cargoes and the 519 cargoes. While the "notwithstanding" is in the legislation, we have had wonderful cooperation on the part of DSAA, and as a policy matter, they require 100 percent U.S.-flag. I just wanted to say some agencies are not trying to avoid cargo preference.

Mr. LIPINSKI. Mrs. Bentley, your time is up for this round.

Mrs. BENTLEY. Thank you, Mr. Chairman.

Mr. LIPINSKI. You are welcome. To change direction slightly over here, how many other nations have cargo preference laws, and what is the percentage requirement?

Mr. BOWMAN. Mr. Chairman, there are 36 other countries that have various kinds of cargo preference law. They vary in terms of what the percentages of cargo preference are. As you can see, Kuwait is obviously one of them, and I misspoke a little bit. They have carried—third-flag vessels have gotten 40 some percent of the cargoes, and the United Arab Shipping Company has gotten 44—45, and the rest is dribbled off to us. Some countries have almost 100—

Mr. LIPINSKI. Wait a second. You said the rest is—we have received some?

Mr. BOWMAN. Three or four percent.

Mr. LIPINSKI. OK.

Mr. BOWMAN. That is next to nothing.

Mr. LIPINSKI. Who was the second one that you mentioned? United—

Mr. BOWMAN. The United Arab Shipping Company which is their flag which is over 40 percent.

Mr. LIPINSKI. OK.

Mr. BOWMAN. And then some other foreign-flag shipping companies have gotten the other 45 percent. Other countries—

Mr. LIPINSKI. Mr. Bateman?

Mr. BATEMAN. Mr. Bowman, could you furnish us with the foreign-flag carriers other than their own who have been carrying that cargo?

Ms. HARLLEE. Yes.

Mr. BOWMAN. Yes, sir. We will provide that for the record—

Mr. BATEMAN. Thank you.

Mr. BOWMAN [continuing]. by shipping company.

[The material submitted can be found at end of hearing.]

Mrs. BENTLEY. Mr. Chairman, would you yield on that?

Mr. LIPINSKI. Mrs. Bentley.

Mrs. BENTLEY. While they are providing a list, I would ask that you have them include the list of those countries which may not

have a cargo preference law written but they enact it, and I am thinking primarily Japan which shops everything FOB, buys everything FOB, and ships it CIF or vice versa, but they control it.

Mr. LIPINSKI. Mr. Bowman, would you be able to supply us with that information?

Mr. BOWMAN. We will be pleased to do so, Mr. Chairman.

Mr. LIPINSKI. Thank you. You were testifying. Do you want to continue?

Mr. BOWMAN. Yes. I just wanted to mention that there were a number of other countries, you know. Spain, Venezuela, you know, are just two that, as a practical matter, have, you know, in some cases almost 100 percent cargo preference requirements with regard to their own shipping lines. But those 36 countries vary. We will provide that for the record, including an attempt to put our arms around those that don't have a specific regime but, in fact, follow one, such as Japan.

Mr. LIPINSKI. In your opinion, is there any nation that is as weak in enforcing their cargo preference as the United States is?

Mr. BOWMAN. Some countries—

Mr. LIPINSKI. You can rephrase that if you wish to.

Mr. BOWMAN. Some countries don't have any at all.

Mr. LIPINSKI. Do they have any shipping?

Mr. BOWMAN. As a practical matter, we could probably be a lot more aggressive than we have been with regard to that issue. We would certainly, those of us sitting here, like to see that. We will be discussing this, as I said earlier, and have already in some degree, with the new Secretary. He was unfamiliar with the issue because Congress raised those issues with him during his confirmation hearing.

Mr. LIPINSKI. Thank you. Mr. Bateman.

Mr. BATEMAN. I think I will withhold at this point, Mr. Chairman.

Mr. LIPINSKI. Mr. Green.

Mr. GREEN. Just one short question, Mr. Chairman. Can you give us a ballpark percentage on how much cargo is shipped that is preference in the United States? Do you have a percentage on that that would be under preference laws?

Mr. BOWMAN. I think we could look that up. I don't have that. I would be glad to provide something like that for the record. You are talking about in terms of annual dollar revenues that are shipped under that?

Mr. GREEN. Dollar revenues, tonnage. If there is a percentage do we ship United States, you know, five percent, twenty percent?

Ms. HARLLEE. We could give you that. It is a very small percentage.

[The material submitted can be found at end of hearing.]

Mr. BOWMAN. We would be glad to—

Mr. GREEN. A very small compared to the amount of shipping so—

Mr. BOWMAN. Yes, sir.

Mr. GREEN. That is what I would guess. I was just wondering if there was some idea that we could make sure the record would have because we are not even enforcing, for example, the small percentage that is required.

Mr. BOWMAN. We would be glad to provide that for the record and will do so.

Mr. GREEN. Thank you.

Mr. LIPINSKI. Thank you. Mrs. Bentley.

Mrs. BENTLEY. Just one more, Mr. Chairman, and then I will shut up. During the September 30 hearing of last year and before DOD stated that even though MARAD's regulations discuss the fact that separate reporting regulations will be issued for DOD's cargoes, none has ever been issued. And I am asking why MARAD hasn't done this at least since September 30 on reporting of the DOD Humanitarian Assistance Cargo Shipments? Even though the shipping arrangements may be accomplished by AID, it is the responsibility of DOD to report to MARAD, not to AID, as the funding is under DOD's appropriation. So these shipments could legitimately be withheld from MARAD since MARAD lacks reporting regulations applicable to DOD.

Mr. BOWMAN. I apologize. I am not familiar with what was discussed at that.

Mrs. BENTLEY. OK.

Mr. BOWMAN. I will be glad to take a particular question from you and respond to it accordingly.

Mrs. BENTLEY. Fine. I appreciate that.

Mr. BOWMAN. I would be glad to do so.

Mrs. BENTLEY. That is all, Mr. Chairman. Thank you very much for your courtesy, Mr. Chairman.

Mr. LIPINSKI. Thank you, Mrs. Bentley. Do we have any other questions from members of the subcommittee? All right. I want to say that first of all I hold you here harmless, and I hold the agency harmless at the present time. We are in a transition. We are at a new beginning. But I think it should be quite obvious from the questions asked this morning that all of us are very interested in the cargo preference issue, and I think most of us, if not all of us, feel it has not been very vigorously enforced.

And as Chairman of this subcommittee and Mr. Bateman as the Ranking Minority Member of this subcommittee, he and I have discussed the situation, and we intend to pursue this very, very strongly with the new administration and a new Secretary of Transportation. We all agree our economy needs to be stimulated in this Country. We all agree that we need more jobs in this Country. And I think we are doing a very bad job in this area of doing anything to create jobs or stimulate the economy.

And as I say, I hold you all harmless, but I do say that in this new administration I think it is an absolute necessity that this agency become more assertive, more aggressive. This subcommittee stands ready, willing, and able to assist you in vigorously enforcing cargo preference. I am prepared to discuss it with the Secretary. I am prepared to discuss it with the President also. It is very important to America, and we are going to push this issue so whoever comes in to run the agency will know that we want them to know we are here to move ahead, to support them, to make sure they are supporting cargo preference.

Mr. BATEMAN. Mr. Chairman?

Mr. LIPINSKI. Mr. Bateman.

Mr. BATEMAN. I appreciate your indulgence, and I will take only a moment. There is one other aspect of this before the government witness leaves and I think that we members of the subcommittee need to focus on. Much of the problem certainly relates to the notwithstanding clauses sprinkled through the United States Code no matter how they are interpreted or what opportunities for evasion they might offer.

Frequently, if not generally, these notwithstanding clauses legislation are not referred to this committee, and we end up learning about it after the fact. And so my suggestion would be that in view of the concern that I think is apparent on the part of the subcommittee, and I think our full committee, is that someone needs to deliver a message who can best deliver that message, and certainly it is not me, that under the normal legislative processes, legislation affecting cargo preference laws ought to be reviewed by the Merchant Marine Committee. And I hope we can get that message to the leadership or wherever it needs to go, and then maybe we won't have this much reliance in the future on these notwithstanding clauses. Maybe we can do something to clarify or abrogate the existing notwithstanding clauses.

Mr. LIPINSKI. Thank you, Mr. Bateman. Thank you, panel. You are appreciated very much. We will be seeing a great deal of you I am quite sure in the near future.

[The Government sponsored cargoes chart can be found at end of hearing.]

Mr. BOWMAN. Thank you, Mr. Chairman, and we will make sure that the messages laid out for you today will be carried back to the Secretary.

Mr. LIPINSKI. Thank you. Our next panel will be a panel of flag carriers. All right. We have our panel now assembled. We have Thomas Maloney, Bonnie Green, Michael Roberts, William Brierre, Peter Finnerty. I understand, Peter, you are going to be the lead-off witness. Is that correct?

Mr. FINNERTY. Yes, Mr. Chairman.

Mr. LIPINSKI. I welcome one and all to our hearing this morning, and, Peter, the floor is yours.

**STATEMENT OF PETER J. FINNERTY, VICE PRESIDENT, PUBLIC AFFAIRS, SEA-LAND SERVICE, INC.; ACCOMPANIED BY THOMAS MALONEY, PRESIDENT, AFRAM LINES [USA] COMPANY, LTD.; BONNIE GREEN, DIRECTOR, GOVERNMENT SERVICES, AMERICAN PRESIDENT LINES, LTD.; MICHAEL ROBERTS, CORPORATE COUNSEL, CROWLEY MARITIME CORPORATION.**

Mr. FINNERTY. Thank you, Mr. Chairman. The brief comments that I would make at the outset to open our presentation represent the views of five U.S.-flag carriers that, taken together, constitute approximately 90 percent of U.S.-flag container capacity and what would be the vast majority of the U.S.-flag liner fleet. As you noted, the representatives on this statement that I am going to comment for are Afram Lines, American President Lines, Crowley Maritime, Farrell Lines, and Sea-Land.

Mr. Chairman, as this subcommittee is well aware, the majority of U.S.-flag merchant ships engaged in foreign commerce are liner

ships providing service between most regions of the world. This key segment of the U.S. merchant marine is faced with profound challenges. Our foreign-flag competitors operate under government regimes which provide a variety of substantial advantages compared to U.S. laws. And in today's world of intense international competition, companies like ours, no matter how resourceful, cannot compete successfully when we are disadvantaged.

Thus, the outcome of government deliberations such as this hearing today will determine whether the U.S. flag will continue to fly on this fleet of ships in the next few years and whether there will even be such a fleet beyond that. U.S. Government-impelled cargo has been a vital element in the revenues of the U.S.-flag merchant marine for well over a century. Military and civilian agency cargoes are funded by taxpayer dollars for national defense and for American foreign policy programs. Government cargo preference is based upon a logical premise: When U.S. taxpayer dollars are in the cargo hold of a ship, there should be a U.S. flag and a U.S. crew on the ship.

The marked reduction in U.S. Government-impelled cargo movements on board U.S.-flag merchant ships is rapidly undermining the continued operation of U.S.-flag container ships and other U.S.-flag vessels. Appendix I to our statement shows the projected dramatic reduction of U.S. military sustainment and household goods cargoes in the next few years. Appendix II shows that the level of U.S.-flag revenues for Defense Department dry cargo shipments is projected to drop to one half the 1990 level by 1995 or from 506 million to 253 million. In 1989, the level was at about \$600 million for these Department of Defense cargoes. This sharp contraction of U.S.-flag business is exerting tremendous pressure on the few remaining U.S.-flag operators.

As this subcommittee has heard before, the need for attention to the policies that underlie the U.S. merchant marine is urgent. We cannot overemphasize that, Mr. Chairman. Unless Congress takes steps this year to address the problem, the number of U.S.-flag liner ships will drop with a concurrent loss of U.S. seafaring jobs and defense capability. As U.S.-flag liner ships become fewer and fewer, the government will be confronted with fewer service options and possibly increased costs for government cargoes in peacetime and in war. In a crisis situation, absence of a U.S.-flag merchant fleet would severely hamper the government's ability to support defense requirements in a timely manner.

By use of the U.S.-flag liner fleet, the U.S. Government has access to their modern, highly automated, intermodal networks for its impelled cargoes just as commercial customers do. This is especially true when speaking about the government needing to use these advantageous intermodal techniques when it comes to the Department of Defense. We have developed a draft bill, Mr. Chairman, which we have attached to our statement. I will not enumerate, but we have listed on page six of this statement the key elements in that legislation, and we strongly recommend it to the subcommittee.

We were asked to comment on H.R. 57, and we would specifically express our opposition to the bill and we offer the substitute in exchange. We hasten to make clear, however, our deep appreciation

for the sustained effort made by Congresswoman Bentley and others on this subcommittee over the years to ensure government adherence to both the letter and spirit of the cargo preference laws. Representative Bentley's introduction of H.R. 57 early this year led to today's hearing so that we might explain to the subcommittee both our views on issues pertaining to military procurement and intermodal transportation and our intense interest in achieving broader maritime reform legislation later this year.

Let us re-emphasize that while reforms in the government's handling of military cargo are needed, the reforms we recommend today are just one part of a set of policy issues facing the U.S.-flag liner fleet. Broader reform of promotional, vessel construction and tax policies is urgently needed. We look forward to working with the subcommittee and the Congress as a whole to finally achieve this year urgently needed major maritime reform legislation. I know this panel would be anxious to attempt to respond to the questions that the subcommittee may have. Thank you very much, Mr. Chairman. I would ask that our complete statement in its entirety be included in the record.

Mr. LIPINSKI. Without objection, so ordered.

[Joint statement can be found at end of hearing.]

Mr. LIPINSKI. Thank you, Mr. Finnerty, for your statement. I understand, Mr. Brierre, you have a statement to make also.

Mr. BRIERRE. Yes, Mr. Chairman. Thank you.

Mr. LIPINSKI. The floor is yours.

#### **STATEMENT OF WILLIAM V. BRIERRE, JR., SENIOR VICE PRESIDENT, LYKES BROTHERS STEAMSHIP COMPANY, INC.**

Mr. BRIERRE. I am William V. Brierre, Senior Vice President of the Washington Division of Lykes Brothers Steamship Company. Lykes is a New Orleans-based U.S. company which has been in business for 93 years and operates 37 liner vessels, both container and multipurpose, from the U.S. Gulf and East Coast to worldwide destinations except Brazil, Argentina, New Zealand, and Australia. I am here today as part of the U.S.-flag carrier panel that is concerned about many issues that involve the compliance by Federal agencies with the cargo preference statutes.

The record of the September 30, 1992, hearing before this subcommittee demonstrated that the Department of Defense in numerous areas has not been complying with the intent of both the 1904 Act or Public Law 664. Particular focus was made in the hearing about DOD's failure to follow the terms of the Wilson-Weeks Agreement.

Lykes understands that H.R. 57 was drafted as an effort to ensure that DOD would comply with, among other things, the Wilson-Weeks Agreement. In this regard, Lykes is concerned that the Wilson-Weeks Agreement should be updated to reflect the current operation and composition of the U.S.-flag merchant fleet and the Maritime Administration's broad administrative authority to enforce Public Law 664 that was provided in the Merchant Marine Act of 1970 before H.R. 57 or some other proposed legislation is enacted. In this regard also, Lykes is committed to working with the subcommittee, the industry, and the government to address both



the shortcomings of the Wilson-Weeks Agreement and proposed congressional legislation that would ensure compliance by DOD with cargo preference statutes.

There are other issues, some of which surfaced at the September 30, 1992, hearing, and others that were not considered at that time which I would briefly like to address. The first, which has been discussed today, is discrimination by foreign countries, specifically Kuwait, against U.S. carriers. Kuwait requires that the United Arab Shipping Company be given the right of first refusal on all project cargoes that are moving from the United States to Kuwait despite their promises to utilize American companies in the rebuilding effort. This policy has been in effect for two years, and our government has done nothing meaningful to rectify it.

Another example is the Turkish Export Incentive Payment Program. The Central Bank of the Republic of Turkey provides subsidies to exporters of textiles and leather garments, shoes, and goods to the U.S. The subsidy is \$110 per ton if shipped on Turkish flag but only \$55 if shipped on non-Turkish flag. In both cases, we are only asking for equal access to their cargo but are effectively barred from both. In the case of Kuwait, MARAD denied a request for a waiver under an Export/Import Bank loan, but it had no effect principally because Kuwait can afford to get the money somewhere else, or they don't need a government guarantee to get the loan.

It seems clear that the government's process in dealing with discrimination is ineffective. We would recommend that stronger legislation be enacted to enable the government to react effectively, and we would recommend closer coordination among the State Department, the Department of Transportation, and the Federal Maritime Commission in addressing this problem.

The second issue is the recent \$10 billion dollars in loan guarantees for Israel. This was an issue in the last hearing, and we understand that the first \$2 billion have been provided to Israel, and there is no requirement to buy U.S. goods or to ship any percentage on U.S. ships if they happen to spend the money in this country. This program is analogous to the cash transfer program in that it provides foreign assistance dollars to foreign governments with no requirement that the money be spent here. It, like cash transfer, will replace existing programs that support U.S. exporters and manufacturers and U.S. carriers and send those jobs abroad as Mrs. Bentley said so aptly just a minute ago. It is essential that Public Law 664 be amended to ensure that loan guarantee assistance will not be exempt from its coverage, to ensure that the erosion of Public Law 664 cargo does not continue.

Finally, it is clear from testimony that was provided in the last hearing and from prior and subsequent events that MARAD's oversight authority provided in Public Law 664 must be significantly enhanced. Recently, the Agency for International Development instituted a series of loading delay assessment penalties on liner shipments under the Public Law 480, Title II, and the AID Loans and Grants Programs. These provisions provide that U.S.-flag liner companies bidding on liner parcels of cargoes that may have loading dates as much as six to eight weeks in the future must load these cargoes, if awarded, within a seven-day period of the project-

ed loading dates. If they do not accomplish this, penalties such as \$1 per ton per day and/or forfeiture of presentation bonds or performance bonds and/or liquidated damages are assessed.

The problems we have with this are the following: The delays, in our experience, are often caused by situations over which AID has some control. AID is just one shipper on any given voyage, and if each shipper arbitrarily imposed penalties for delays, U.S.-flag liner service would no longer be viable. When a U.S.-flag carrier takes exception to the LDA in its offer to carry AID cargo, AID unilaterally disqualifies the carrier, and it is now using it as a basis for determining nonavailability of U.S.-flag service under Public Law 664. It is our understanding that under the Merchant Marine Act of 1970, it is MARAD, not AID, that sets the criteria for determination of nonavailability of U.S.-flag service.

Programming agencies such as AID may not arbitrarily construct their own criteria for determining nonavailability, yet AID continues to do so. The LDA situation demonstrates that programming agencies such as AID and in a somewhat different way DOD, feel they can operate their programs apart from MARAD and Public Law 664. Clearly, much stronger and more appropriate authority must be developed of Public Law 664 and MARAD to ensure that compliance with this law is achieved. We look forward to the opportunity to work with everyone concerned to accomplish this end. Thank you, Mr. Chairman. I, like Mr. Finnerty, would like my full statement provided for the record. I will be glad to answer any questions that you or the other subcommittee members may have regarding these and other cargo preference issues.

Mr. LIPINSKI. Thank you, Mr. Brierre. Without objection, your entire statement will be placed in the record.

[Statement of Mr. Brierre can be found at end of hearing.]

Mr. LIPINSKI. And the Chair now recognizes our Ranking Minority Member, Mr. Bateman.

Mr. BATEMAN. Thank you very much, Mr. Chairman. I will take as little time with questions this morning, but it would be very helpful at least to this member if those of you who represent the carriers would furnish us with specifics of how you think we can tighten the loopholes, the escape clauses, the wiggle room that AID and other agencies have been using and avoiding what is the intent, certainly, of this committee and I think of the Congress with reference to our cargo preference laws.

I would like to think that all Federal agencies would be very sympathetic to the underlying premises of our cargo preference laws, but as is the case, I think, generally in the American society and economy, certain people understand the importance of the American merchant marine. Most do not. And where they can evade and avoid if it costs them another dollar without regard to the national objectives underlying it, they avoid and evade, and we would like your help in how we can hopefully tighten up these laws so that they have the impact they were intended to have.

Something else that I would be very interested in and want to pursue is this matter of the cargo moving under the Israeli loan guarantees. As I understand what I am reading and hearing this morning, we don't have a very strong case that legalistically the cargo preference laws are binding. Obviously, it would have been

very desirable if they had been made binding, but I assume there is no legal argument that, in fact, they are. Would you all agree that that is the case?

Mr. ROBERTS. Congressman Bateman, I think it would be fair to say that they are binding, but there are no penalties for not complying with them.

Mr. BATEMAN. Well, gee. They are legally binding even though as I recall reading here the cash transfer payments are not covered by cargo preference, and I was assuming that the loan guarantee program was in a similar vein and was not covered. It is very important to me to know whether it is legally binding whatever the enforcement mechanism or penalty provisions may be.

Mr. BRIERRE. In the instance of cash transfer, I believe it was found in Court that the cargo preference laws do not apply. Our complaint is that they should have been included when that program was invented. There are other programs that USDA and AID have created, with the help of other committees in the Congress, that circumvent the cargo preference laws, and cash transfer is one and this \$10 billion to Israel is another. You may recall that prior to 1985 there was an attempt on the part of the Agriculture Department to create a program called blended credit. They maintained that cargo preference didn't apply, and they began shipping a lot of cargo under it. Carriers and maritime labor filed something equivalent to a class action, and Judge June Green found that cargo preference did indeed apply. We probably should have given her the AOTOS Award.

But the Secretary of Agriculture, in his wisdom, canceled the program and started something called the Export Enhancement Program. The result was the cargo preference compromise as part of the 1985 farm bill, and the U.S. maritime industry gave up that program in return for a higher percentage in Public Law 480.

Mr. BATEMAN. Well, I guess really what I am asking for is your help in compiling an inventory of where we need to look to try and see that we don't leave further loopholes, further opportunities for the erosion of the cargo preference laws, and that where you think the existing laws are binding and are not being upheld what we can do to try and see that there is some leverage that can be applied either by amendment to legislation or otherwise that will put some teeth in them where the cargo preference laws were intended to apply.

I am still a little nervous as to my understanding as to whether the cash transfer payments which the Court said were not covered by cargo preference are, in fact, analogous to the Israeli loan guarantee or whether there is an argument that legally the cargo preferences do indeed apply to the Israeli loan transfer shipments. And I would like any clarification you all can offer me on that.

Ms. GREEN. If I might address that just for a minute, there have been loan guarantee programs going all the way back to the Chrysler loan guarantee a number of years ago where MARAD took a very proactive position and did, in fact, ensure that there was a cargo preference requirement that was honored by that company for the duration of their loan guarantee.

Mr. LIPINSKI. Did you say that was on the Chrysler loan?

Ms. GREEN. Quite a number of years ago when the Chrysler Corporation received substantial loan guarantees from the Treasury Department, they were at that time purchasing engines and other equipment overseas, and there was a cargo preference requirement in the loan guarantee program.

Mr. LIPINSKI. Thank you. Congressman Bateman, did you conclude?

Mr. BATEMAN. Yes. I see the red light, Mr. Chairman, so I will conclude.

Mr. LIPINSKI. Thank you. Congressman Pickett.

Mr. PICKETT. Thank you, Mr. Chairman. Apparently, there is a process under Section 19 of the Merchant Marine Act of 1920 to have a hearing before the Federal Maritime Commission on this issue of a foreign nation putting restrictions on shipping. Has any effort been made to conduct a proceeding of that nature before the Maritime Commission?

Mr. FINNERTY. Mr. Pickett, do you intend that with respect to a particular country?

Mr. PICKETT. With respect to Kuwait.

Mr. BRIERRE. The answer is no.

Mr. PICKETT. Is there some reason why this avenue was not pursued? It would seem to be a logical way to proceed.

Mr. BRIERRE. Well, I suppose it has something to do with the timeframe. We have been pursuing diplomatic avenues to date, and I suppose that we will get to the point where we will want to ask the Federal Maritime Commission to initiate Section 19 actions, but we haven't reached that point.

Mr. PICKETT. On the larger question of the level of support that the shipping industry gets from the Federal Government agencies like the Maritime Administration and the Federal Maritime Commission, what sort of cooperation do you feel that you are getting in trying to solve the cargo preference problems with which you are confronted from these agencies?

Mr. BRIERRE. In the instance of the Kuwaiti problem, we were dealing with discrimination, but it is on basically commercial cargo. It is a discrimination in the marketplace so you can't invoke cargo preference, or it is hard to invoke leverage like withholding waivers under a loan guarantee program. So MARAD doesn't have the same kind of enforcement authority in that instance that they would, say, against one of our agencies or in the instance of a country that is a recipient of loans.

Mr. PICKETT. It was my understanding that the Maritime Commission does have authority under this Section 19 with respect to regular commercial shipping where there is discrimination against American shippers, and I am sort of surprised that someone hadn't pursued that vigorously and promptly as an avenue of relief in this case.

Ms. GREEN. If I might address that just a little further, we have been working with MARAD and the Embassy in Kuwait for the better part of two years now but in a number of instances along the way have been told that the issue had been all but resolved. And then for whatever reason, we seemed to go backwards, and that is part of the reason why we have not gone to the FMC be-

cause we had hoped to be able to resolve it without going into a Section 19 investigation.

Mr. PICKETT. All right. Thank you, Mr. Chairman. Those are all the questions that I have.

Mr. LIPINSKI. Thank you, Mr. Pickett. The Chair recognizes Mrs. Bentley.

Mrs. BENTLEY. Mr. Chairman, thank you. I would like to join in with what Mr. Pickett has said and what Mr. Bateman was talking about, and I know the Chairman or I am sure the Chairman is probably in agreement that I think we need to pursue the Section 19 ASAP. I think if we continue to wait diplomatically, the last nail will be driven into the American-flag merchant marine, and then we will start to ask for it, when it will be far too late. That is the one club we still have, and I think it should be applied.

I just have a couple of questions. You have indicated as representatives of the industry that cargo preference is pretty important. Does it represent 10 percent of your revenue, 5 percent of your revenue, 20 percent of your revenue? Do we have any idea, roughly?

Mr. FINNERTY. I will start, Congresswoman Bentley. Yes, indeed. It is very important to the U.S.-flag carriers. In Sea-Land's case, while it varies by agency, I would say that the military cargoes—indeed, all government-impelled cargoes would probably be in excess of approximately 10 percent of our gross revenues.

Mrs. BENTLEY. And the profit margin for the industry today is what? Two, three, four percent? It is across the board, roughly?

Mr. FINNERTY. It varies by company, but I would say yes, and in some instances carriers are in the red.

Mrs. BENTLEY. How does that apply to APL, Ms. Green?

Ms. GREEN. For APL, we are talking about something in the range of five percent of our revenues so in the range of \$100 million, maybe a little more than that, primarily because of the trade routes we serve and the reductions in the military.

Mrs. BENTLEY. Mr. Briere?

Mr. BRIERE. It varies by trade route. On the most sophisticated trade routes like Europe and the southern European countries in the Mediterranean, the dependence is far less than in some of the lesser developed areas like the coasts of Africa, for instance, where it is a very high percentage.

Mrs. BENTLEY. Mr. Maloney?

Mr. MALONEY. We specialize in lesser developed countries, and, therefore, our percentage is very high. Most of our cargo is a preference cargo.

Mrs. BENTLEY. Mr. Roberts?

Mr. ROBERTS. I don't have a specific percentage. I would have to say that the U.S. Government is our best customer.

Mrs. BENTLEY. So what happens if the cargo preference field really could make the difference as to whether any flag is left on an American-flag ship or not—any American flags left on ships?

Mr. FINNERTY. I think that is especially true, Congresswoman Bentley, as we point out in the chart that we attached, because there is a very dramatic elimination of the normal Defense Department levels of cargoes, those cargoes that remain are all the more important to the U.S.-flag fleet.

Mrs. BENTLEY. Do you all feel that you are getting the same kind of support on cargo preference from the Maritime Administration today as we have been getting in the '70's, '80's, '60's, '50's?

Mr. BRIERRE. MARAD used to be more assertive in its enforcement role over the preference laws than they seem to be now. Prior to 1975, I believe there were fewer programs under cargo preference even though they should have been there. For instance, MARAD asserted its authority with respect to the cargo preference laws and brought these programs in, such as the Foreign Military Sales Program, for example. Today, they seem more willing to admit that they have no enforcement authority since they don't have any leverage over these other agencies. These agencies have to file reports to the Maritime Administration, but when they come in at the end of the year, they say, "We didn't ship 50 percent. We only shipped 38 percent U.S.-flag.", it goes into the report, but there is no penalty.

Mrs. BENTLEY. "So what are you going to do to us?"

Mr. BRIERRE. And there is a gradual erosion because of that.

Mrs. BENTLEY. One last question. Will enactment and enforcement of H.R. 57, updating it, et cetera, help offset any of the planned DOD reductions?

Mr. FINNERTY. I would be happy to have others comment as well, Mrs. Bentley, but the point that we make in our statement is that we would much prefer the language that is contained in the draft that we attach to our statement. Clearly, some step does need to be taken, and it is simply a very lengthy explanation required to go into all the ins and outs. We wholeheartedly appreciate your focusing attention on the need for those changes.

Mrs. BENTLEY. Thank you, Mr. Chairman, for your time and your courtesies.

Mr. LIPINSKI. Thank you, Mrs. Bentley. I have a question for the entire panel. To what extent were each of your companies involved in the mobilization for the Persian Gulf War?

Ms. GREEN. If I might begin, Mr. Chairman. When war broke out in the Persian Gulf, we immediately volunteered our services to meet military lift requirements and asked MSC to define their needs. Because we had sufficient lift available and were able to utilize our existing commercial pipeline, DOD did not have to activate their sealift readiness program. This proved to be an excellent decision on their part because the commercial intermodal system with its high through-put capacity remained intact to support the military and their needs.

In addition to delivering 41.7 percent of the containerized Desert Storm cargo in excess of 16,000 containers, APL broke out, crewed and operated 12 vessels of the Ready Reserve Fleet, four ro-ro's delivering unit equipment and eight ammo ships. We provided a comprehensive logistic service including electronic data interface. We committed 30 percent of our westbound capacity, over 1,044 boxes a week. We leased thousands of containers to augment our existing container fleet. We relocated APL management with military experience to Saudi Arabia and provided port operation support in Dammam, Fujaira, and Al Jubail.

Mr. LIPINSKI. Next?

Mr. FINNERTY. Mr. Lipinski, speaking on behalf of Sea-Land, I would say that our own activities were also very extensive in the Desert Storm experience. The company, likewise as to APL's explanation, created an intermodal pipeline in response to the military's needs. We chartered, I believe, up to nine containerships to help in the provision of that very rapid express service, both transatlantic and transpacific. We leased thousands of containers, and we likewise placed personnel in the theater to assist the military so it was a very extensive response. I would also say that just as they had the experience of only using a portion of their total capability, we likewise were available to accommodate the military's needs for container loads, and had they needed to move even more, especially in the early parts of that deployment, we had very ample capacity for them.

Mr. LIPINSKI. Thank you. Mr. Brierre?

Mr. BRIERRE. Mr. Chairman, we participated in both the surge and the sustainment part of that war. We chartered as many as 13 individual vessels to the military during the surge phase of the war which remained under charter—some of them did—for not only the Desert Shield but the Desert Storm and Desert Sortie, and we had a maximum of 10 under charter at one time. And our container services offered the same kind of intermodal pipeline and had as many as eight to nine vessels in liner service providing container service to Dammam.

When we experienced difficulty with our foreign-flag on-carrier, who refused to go into the Persian Gulf at one point, we started our own U.S.-flag service direct from the U.S. to the Persian Gulf, and that involved up to three vessels. So we had eight to twelve vessels providing regular liner service to Dammam, plus the 13 ships under charter. Let me add one other thing. There was a requirement to move some cargo from Europe to the theater. We were able to provide chartered foreign vessels to carry that cargo to support the war.

Mr. LIPINSKI. Thank you. Mr. Maloney?

Mr. MALONEY. We own and operate conventional breakbulk vessels, and I chartered these vessels to the military throughout Desert Storm and Desert Shield and Operation Provide Comfort. We continued our regular service by then going out and chartering other American-flag vessels that were less suitable for the military. So we were one of the first companies to charter with the military and gave them our total support.

Mr. LIPINSKI. Thank you. Mr. Roberts?

Mr. ROBERTS. Yes. Crowley Maritime chartered three of our seven U.S.-flag vessels to the military, the American Condor and the American Falcon and the Senator. The Condor and the Falcon—they were all ro-ro vessels. The Condor and the Falcon had been operating a transatlantic service to Europe. As a result of giving those vessels to the military, we had to give up our service. As a result of losing the Senator out of our Central American service, we lost a large amount of our market share in the commercial market there and have had to work very hard to regain that, but we supported the military very actively in the war effort.

Mr. LIPINSKI. Thank you very much, panelists. Congressman Bateman, any further questions?

Mr. BATEMAN. No.

Mr. LIPINSKI. Congresswoman Bentley?

Mrs. BENTLEY. No, thank you, Mr. Chairman.

Mr. LIPINSKI. OK. I want to thank the panel for their appearance here and their testimony. I want to echo what Congressman Bateman said. We need your help, your assistance to be able to help you more. We need information. We need you to be vigilant on what is going on and report back to us so we in turn can help you. We also need, because you are the experts in the field, specific ideas on what we can do to motivate people, to enforce existing law, perhaps to amend existing law to improve your position, perhaps to pass new laws in order to improve your position.

I think it is enormously important that we improve the status of this industry in this Country. I sincerely believe that unless we do it now, there will be nothing to do in a very, very short time. So I believe the time is now. We must be successful, but the only way we are going to be successful is by the input we receive from you people and, quite frankly, how much you continue to motivate us to be of help to you. Did you want to say something, Congressman Bateman?

Mr. BATEMAN. Only this much, Mr. Chairman, and thank you for what you have said and for all of the things you have said this morning. I would like to reassure the witnesses that we are cognizant of the key provision of the Hippocratic Oath, as I recall it, and that is to the patient we will do no harm. We also want to be assured that when we are trying to help, if you think there is some misguidance involved or that we are putting you in jeopardy in terms of the entire congressional process, we will be sensitive to listening to you if you have those concerns as well.

Mr. LIPINSKI. And it is only fitting and proper that we conclude this first of a series of hearings on cargo preference with a statement by Congresswoman Bentley.

Mrs. BENTLEY. Mr. Chairman, all I have to say is this. I am not on the committee right now. I am still trying to get a waiver because my heart is with this industry and to do everything we can to keep that American flag flying on the high seas. Thank you.

Mr. LIPINSKI. I hope we have made you feel at home in spite of the fact you are no longer on the committee. Thank you very much.

[Whereupon, at 11:56 a.m., the subcommittee was adjourned, and the following was submitted for the record:]



103D CONGRESS  
1ST SESSION

# H. R. 57

To amend title 10, United States Code, to clarify the preference for United States-flag merchant vessels in the carriage of Department of Defense cargoes, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mrs. BENTLEY introduced the following bill; which was referred jointly to the Committees on Merchant Marine and Fisheries and Armed Services

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## A BILL

To amend title 10, United States Code, to clarify the preference for United States-flag merchant vessels in the carriage of Department of Defense cargoes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “United States Mer-  
5 chant Marine Utilization and Preference Act of 1993”.

### 6 SEC. 2. FINDINGS AND POLICY.

7 (a) FINDINGS.—The Congress finds that, for national  
8 defense, it is in the interest of the United States that a

1 clear understanding exists among the Department of  
2 Transportation and the Department of Defense, in par-  
3 ticular, and all other Federal departments and agencies,  
4 that all Federal departments and agencies have com-  
5 plementary interests in the control and utilization of  
6 ocean-going merchant vessels that are registered or docu-  
7 mented under the laws of the United States.

8 (b) **POLICY.**—It is the policy of the United States  
9 that—

10 (1) the Federal Maritime Administration and  
11 its wartime counterpart have broad powers of con-  
12 trol over ocean-going United States-flag merchant  
13 vessels; and

14 (2) the Secretary of Defense, operating under  
15 the national policy promulgated in section 101 of the  
16 Merchant Marine Act, 1936 (46 App. U.S.C. 1101),  
17 ensure that military drafts of United States-flag  
18 merchant vessels (including breakbulk, roll-on-roll-  
19 off, lift-on lift-off (cellularized and containerized),  
20 multipurpose carriers, tankers, and various auxil-  
21 iaries), are operated in conformity with the require-  
22 ments and plans of the Department of Defense and  
23 military exigencies.

24 **SEC. 3. PURPOSE.**

25 The purpose of this Act is to—

(1) clarify the Department of Defense cargoes transported by water that are required to be transported on privately owned United States-flag vessels;

(2) clarify the Department of Defense cargoes transported by water that may be transported on vessels that are owned, controlled, or chartered by the Government of the United States; and

(3) reduce to a minimum the number of cargo transport vessels maintained and operated by the Military Sealift Command in order to give preference to privately owned United States-flag vessels for transportation by water of Department of Defense cargoes.

**SEC. 4. TRANSPORTATION BY WATER OF DEPARTMENT OF  
DEFENSE CARGOES.**

Section 2631 of title 10, United States Code, is amended to read as follows:

**“§ 2631. Transportation by water of Department of  
Defense cargoes**

“(a) Except as otherwise provided in this section, under conditions other than full or partial mobilization declared by the President, transportation by water for Department of Defense cargoes shall be obtained, consistent with military requirements and prudent management, in the following order of priority:

1           “(1) To the maximum extent practicable, use of  
2       privately owned United States-flag vessels that are—

3           “(A) operating in United States liner or  
4       tramp trades, and

5           “(B) not chartered to the Government.

6           “(2)(A) Time charter or voyage charter of suit-  
7       able privately owned United States-flag vessels—

8           “(i) operating in liner service providing  
9       partial or total space available, or

10          “(ii) operating in tramp service,  
11       to the extent those vessels are voluntarily made  
12       available to the Department of Defense.

13          “(B) Time charters and voyage charters pursu-  
14       ant to this paragraph shall be kept to the minimum  
15       necessary to meet requirements which, barring rea-  
16       sonable foresight, cannot be met by United States-  
17       flag liner or tramp operators.

18          “(3)(A) In the event suitable United States-flag  
19       vessels are not available in accordance with para-  
20       graphs (1) and (2), and upon the written approval  
21       of the Secretary of Transportation, use of—

22          “(i) vessels in the nucleus fleet established  
23       under section 2631a; and

24          “(ii) to the extent vessels in the nucleus  
25       fleet are not available, as determined by the

1 Secretary of Defense, foreign-flag vessels to the  
2 extent necessary to meet urgent military re-  
3 quirements.

4 “(B) Any use of a foreign-flag vessel pursuant  
5 to this paragraph shall be limited to a single voyage.

6 “(b)(1) Except as provided in paragraph (2), any ap-  
7 propriate tariff that a person has filed with the Federal  
8 Maritime Commission under either the Shipping Act of  
9 1916 or the Shipping Act of 1984 shall apply to transpor-  
10 tation of Department of Defense cargo on any United  
11 States-flag vessel that is operated by that person.

12 “(2)(A) This section does not prohibit an agency that  
13 is responsible for procuring transportation of Department  
14 of Defense cargo from procuring that transportation from  
15 a person at a negotiated rate that is more favorable to  
16 the United States Government than a tariff filed by that  
17 person that is otherwise applicable under paragraph (1).

18 “(B) Any rate that is negotiated under this subpara-  
19 graph shall be filed with the Federal Maritime Commis-  
20 sion in the manner prescribed by the Commission.

21 “(c)(1) The Office of the Chief of Naval Operations  
22 shall be solely responsible in the Department of Defense  
23 for obtaining, providing, operating, and controlling Gov-  
24 ernment-owned or Government-chartered vessels—

1           “(A) to transport Department of Defense car-  
2       goes in areas that are not served by privately owned  
3       United States-flag merchant vessels; and

4           “(B) for purposes of any partial or full mobili-  
5       zation conducted for any reason declared by the  
6       President.

7       “(2)(A) The Military Sealift Command is the sole  
8       manager for ocean transportation of Department of De-  
9       fense cargoes.

10       “(B) The purpose of any ocean transportation pro-  
11      vided by the Department of Defense is to support and aug-  
12      ment persons who provide transportation by water in com-  
13      mercial service to the extent those persons cannot provide  
14      the vessels or services required by the Department of De-  
15      fense.

16       “(C) Except as provided in this section and section  
17      2631a, the Department of Defense shall not engage in  
18      competition with private persons in the provision of trans-  
19      portation by water in commercial service.”.

20   **SEC. 5. NUCLEUS FLEET.**

21       Chapter 157 of title 10, United States Code, is  
22      amended by inserting after section 2631 the following:

23   **“§ 2631a. Nucleus fleet**

24       “(a)(1) The Secretary of Defense shall establish and  
25      maintain at all times under the exclusive eustody, jurisdic-

1 tion, and control of the Department of Defense, a fleet  
2 of vessels, of a size and composition appropriate to meet  
3 military requirements. Such fleet shall be known as the  
4 'nucleus fleet'.

5       “(2) The nucleus fleet may be comprised of—

6           “(A) Government-owned vessels, operated by  
7 either—

8               “(i) the Military Sealift Command or other  
9 Department of Defense agency with civil service  
10 employees, or

11               “(ii) companies that are citizens of the  
12 United States under section 2 of the Shipping  
13 Act, 1916, with commercial crews; or

14           “(B) privately owned United States-flag vessels  
15 that are chartered by the Department of Defense.

16       “(b)(1) Under conditions other than full mobilization,  
17 the nucleus fleet—

18           “(A) shall consist of such number and types of  
19 vessels as is appropriate to respond to changes in  
20 the military situation, as determined by the Sec-  
21 retary of Defense; and

22           “(B) may include transport, cargo, tanker, roll-  
23 on roll-off, lift-on lift-off, geared, and nongear-  
24 sels and auxiliaries in appropriate numbers—

1           “(i) to carry out logistic needs of the mili-  
2           tary departments which cannot be met by pri-  
3           vate United States commercial interests;

4           “(ii) to provide immediate capability in an  
5           emergency; and

6           “(iii) to provide an adequate base for nec-  
7           essary expansion to meet emergency or mobili-  
8           zation requirements in support of approved  
9           plans for national defense, national emergency,  
10          national mobilization, or national interest.

11          “(2)(A) Under conditions other than full mobiliza-  
12          tion, that portion of the nucleus fleet maintained for pur-  
13          poses of transportation by water shall remain within close  
14          tolerance to the following numbers of vessels by types:

15               “(i) 10 dry cargo vessels.

16               “(ii) 22 tanker vessels.

17          “(B) The numbers set forth in subparagraph (A)(i)  
18          and (ii)—

19               “(i) shall be reduced by one for each vessel de-  
20          activated under subsection (c)(2)(A) or for which a  
21          contract of charter is terminated under subsection  
22          (c)(2)(B); and

23               “(ii) are subject to review and redetermination  
24          by the Secretary of Defense in accordance with mili-  
25          tary operation requirements.



1       “(C) Any change in the composition of the nucleus  
2 fleet from the numbers and types of vessels specified in  
3 subparagraph (A)(i) and (ii) shall not be effective unless—

4               “(i) a request for that change is submitted by  
5 the Secretary of the Navy to the Secretary of De-  
6 fense;

7               “(ii) the change is approved by the Secretary of  
8 Defense; and

9               “(iii) the change is reported to the Congress  
10 with supporting rationale.

11       “(3) In addition to the numbers of vessels specified  
12 under paragraph (2), the nucleus fleet may include such  
13 miscellaneous service support vessels and naval fleet auxil-  
14 iary vessels as the Military Sealift Command determines  
15 to be necessary to retain and operate for purposes of pro-  
16 viding indirect support of other vessels of the Department  
17 of the Navy.

18       “(e)(1) If a vessel in the nucleus fleet is inactive for  
19 a period of 30 days, it shall be placed in reduced operating  
20 status.

21       “(2) If vessel in the nucleus fleet is inactive for 120  
22 days—

23               “(A) in the case of a vessel that is owned by  
24 the United States, it shall be deactivated and placed

1 in reserve or disposed of, as considered appropriate  
2 by the Secretary of Defense; and

3 “(B) in the case of a privately owned vessel, the  
4 contract under which it is chartered shall be termi-  
5 nated on the earliest possible date.

6 “(d)(1) Under conditions of full mobilization, in addi-  
7 tion to the numbers and types of vessels authorized under  
8 subsections (a), (b), and (c)—

9 “(A) the nucleus fleet may be augmented by  
10 those types and numbers of vessels determined to be  
11 appropriate by the Secretary of Defense, in accord-  
12 ance with the priority established under section  
13 2631(a);

14 “(B) the specific types of vessels to be added to  
15 the nucleus fleet, and an appropriate schedule for  
16 their transfer to or acquisition for the nucleus fleet,  
17 shall be determined only by the Chief of Naval Oper-  
18 ations.

19 “(2)(A) Any vessels to be added to the nucleus fleet  
20 pursuant to paragraph (1) shall be provided by the Sec-  
21 retary of Transportation in accordance with mobilization  
22 procedures approved by the Secretary of Defense.

23 “(B) In addition to additional vessels provided under  
24 subparagraph (A) for the nucleus fleet, the Secretary of  
25 Transportation shall provide to the Secretary of Defense

1 such additional miscellaneous service support vessels and  
2 naval fleet auxiliary vessels as the Secretary of Defense  
3 determines to be necessary for purposes of providing indi-  
4 rect support of other vessels of the Department of the  
5 Navy for purposes of a full mobilization.

6 “(3) During periods of full or partial mobilization,  
7 the Secretary of Defense shall—

8 “(A) continuously review the number of mer-  
9 chant vessels under the control of the Department of  
10 Defense;

11 “(B) determine any of those vessels that are ex-  
12 cess to the needs of the department; and

13 “(C) transfer to the Secretary of Transpor-  
14 tation such excess vessels.

15 “(4)(A) Upon the termination of hostilities or in the  
16 event of a partial demobilization prior to the termination  
17 of hostilities, the nucleus fleet shall be reduced to the num-  
18 bers and types of vessels in the fleet before full mobiliza-  
19 tion, as determined by the Secretary of Defense.

20 “(B) In the event of a reduction in the nucleus fleet  
21 under this paragraph, any vessels in the fleet that are re-  
22 tained as part of either the active or laid-up permanent  
23 operating forces of the Department of the Navy shall be  
24 released from control by the Department of Defense in  
25 the following order of priority:

1           “(i) Foreign-flag vessels that are under charter.

2           “(ii) United States-flag vessels that are under  
3 charter from private owners.

4           “(iii) United States Government-owned mer-  
5 chant vessels that are desired for sale or charter by  
6 United States citizens for United States-flag oper-  
7 ation in commercial service.

8           “(C) Vessels that are sold or chartered pursuant to  
9 subparagraph (B)(iii) are deemed to be war-built vessels  
10 for purposes of the Merchant Ship Sales Act of 1946 (50  
11 App. U.S.C. 1735 et seq.).”.

## 12 **SEC. 6. CLERICAL AMENDMENT.**

13           The table of sections at the beginning of chapter 157  
14 of title 10, United States Code, is amended by striking  
15 the item relating to section 2631 and inserting the follow-  
16 ing:

“2631. Transportation by water of Department of Defense cargoes.  
“2631a. Nucleus fleet.”.

## 17 **SEC. 7. READY RESERVE FORCE.**

18           Section 11 of the Merchant Ship Sales Act of 1946  
19 (50 App. U.S.C. 1744) is amended by adding at the end  
20 the following:

21           “(e) USE OF VESSELS IN READY RESERVE FORCE.—

22           “(1) USE IN PEACETIME.—Vessels in the Ready  
23 Reserve Force component of the National Defense  
24 Reserve Fleet may be used in peacetime for routine

1 movements of cargo as part of military exercises  
2 only if that use does not compete with United  
3 States-flag commercial vessel operators.

4 “(2) DEACTIVATION FOLLOWING NATIONAL  
5 EMERGENCY.—A vessel in the Ready Reserve Force  
6 component of the National Defense Reserve Fleet  
7 that is activated to meet military sealift require-  
8 ments associated with a national emergency shall be  
9 deactivated in an expeditious manner if those re-  
10 quirements no longer exist.”.

**U.S. House of Representatives**  
**Committee on**  
**Merchant Marine and Fisheries**  
 Room 1334, Longworth House Office Building  
 Washington, D.C. 20515

**TO: MEMBERS, SUBCOMMITTEE ON MERCHANT MARINE**  
**FROM: Majority and Minority Staff**  
**DATE: February 19, 1993**  
**SUBJECT: Oversight Hearing on Cargo Preference**

On Wednesday, February 24, 1993, at 10:00 a.m. in 1334 Longworth House Office Building, the Subcommittee on Merchant Marine will conduct an oversight hearing on cargo preference as it relates to the rebuilding of Kuwait, the Israeli loan guarantees, and the carriage of military cargo on U.S. ships.

The Subcommittee has invited the Department of Defense and representatives of U.S.-flag liner companies (American President Lines (APL), Sea-Land, Lykes, Crowley, Central Gulf, and Farrell) to testify on the carriage of military preference cargo. The State Department has been invited to comment on the Israeli loan guarantees and the rebuilding of Kuwait as they relate to cargo preference. The Maritime Administration (MARAD) has been requested to comment on all three subjects.

The Department of State and the Department of Defense declined to testify but have committed to testify at a later date. Following the February 24 hearing, Chairman Lipinski will contact Secretary Christopher and Secretary Aspin to arrange a suitable date when they will present their testimony.

**BACKGROUND**

On September 30, 1992, the Subcommittee held a hearing on cargo preference dealing with the transportation of NATO cargo, Meals Ready to Eat (MRE) cargo, and waivers of cargo preference laws by the Agency for International Development (AID). Testifying at the hearing were representatives of the Military Sealift Command (MSC) of the Department of the Navy, AID, and MARAD.

At that time, the Subcommittee announced that there would be a series of cargo preference hearings with regard to Federal agencies' compliance with cargo preference laws.

### STATUTORY HISTORY

As early as 1904, U.S. laws have provided that U.S.-flag ships carry a certain share of the cargoes produced by U.S. Government programs.

The Military Transportation Act of 1904 (10 U.S.C. 2631) was the first cargo preference statute; still in force, it requires that 100 percent of the military's supplies be carried on U.S.-flag vessels.

In 1934, Public Resolution 17 expressed the "sense of Congress that in any loans made by any instrumentality of the Government to foster the exporting of agricultural or other products, provision shall be made that such products shall be carried exclusively in vessels of the United States...". While P.R. 17 is broad in terms, the practice which has evolved is that P.R. 17 applies almost exclusively to loans made by the United States Export-Import Bank, and administrative waivers are granted allowing the borrower to obtain its own transportation for up to 50 percent of the goods purchased with loan funds.

After World War II, Congress annually required that 50 percent of foreign aid shipments be carried on U.S.-flag vessels. In 1954, the 50 percent cargo preference requirement enacted annually became permanent law in the Cargo Preference Act of 1954, also known as Public Law 664. The Act requires that at least half of all ocean cargo generated directly or indirectly by the Federal Government be transported in U.S.-flag vessels. The law applies whenever the United States: (1) buys goods, (2) provides goods to a foreign country for free or without adequate compensation, (3) advances money or credit, or (4) guarantees the convertibility of foreign currency.

Also in 1954, an agreement was signed between the Secretary of the Navy and the Secretary of Commerce, known as the Wilson-Weeks Agreement. The Agreement's purpose was to implement the cargo preference laws by establishing a priority system for utilizing U.S.-flag vessels in the carriage of military preference cargo. To assist in maintaining a U.S.-flag fleet, the Agreement, still in effect, requires the Navy to first utilize privately-owned merchant vessels when carrying military cargo. Next, the Navy can charter privately-owned vessels. If privately-owned commercial vessels and charter vessels are not available, the Navy is authorized to use Government ships and, lastly, foreign-flag ships -- only to the extent necessary to meet urgent military requirements. The Agreement also states that the Navy needs a nucleus fleet of merchant ships assigned to it under conditions short of full mobilization to provide an adequate base for emergency requirements.

-3-

In 1985, the 50 percent cargo preference requirement was increased to 75 percent for direct give-away aid, such as "Food for Peace" cargo, otherwise known as P.L. 480 cargo. Other types of foreign assistance cargoes involving short-term credit, blended credit, bartering, and other similar types of non-direct aid were not covered by cargo preference laws. This change in the cargo preference law (46 App. U.S.C. 1241f) was made in the 1985 Farm Bill, the Food Security Act of 1985 (P.L. 99-198).

#### COMPLIANCE WITH CARGO PREFERENCE LAWS BY GOVERNMENT AGENCIES

The Maritime Administration of the Department of Transportation is responsible for promoting the U.S.-flag fleet and U.S. shipbuilding. One of MARAD's duties is to oversee cargo preference programs to assure full compliance by Government agencies. The Subcommittee has received numerous complaints in the past several years that Federal agencies are attempting to circumvent cargo preference laws by issuing waivers or designing transactions that avoid the law. MARAD has the authority under the 1954 Act to review the other agencies' administration of cargo preference laws and to report its findings to Congress, but MARAD does not have enforcement authority.

#### I. REBUILDING OF KUWAIT

The Government of Kuwait (GOK) committed to use U.S. companies for a significant portion of the rebuilding of Kuwait, including the use of U.S.-flag vessel companies, after the Persian Gulf War. From the conclusion of the Gulf War through September 1992, the U.S. exported to Kuwait over \$2.254 billion in a wide range of products. Non-military merchandise exports were about \$1.3 billion.

Although the United States is shipping cargo to Kuwait, the GOK is enforcing Resolution No. 47/86 that gives the United Arab Shipping Company first right of refusal to transport the cargo. U.S.-flag carriers are available to ship the cargo, but have yet to do so because of the discrimination caused by Resolution No. 47/86.

#### II. ISRAELI LOAN GUARANTEES

President Bush requested that Congress approve \$10 billion in U.S. loan guarantees for the Government of Israel (GOI). The loan guarantees were related to the resettling costs of immigrants into Israel from the republics of the former Soviet Union, Ethiopia, and other countries. Congress approved the loan guarantee late in the last Session of the 102nd Congress (P.L. 102-229).

Several Members of the Committee on Merchant Marine and Fisheries, along with other Members, asked the State Department to write into its Agreement with the GOI a provision which encouraged the purchase of U.S. goods with these funds and the



shipment of 50 percent of the cargo on U.S.-flag ships. U.S. carrier rates are comparable to Israeli carrier rates. Such an agreement with Israel is not unprecedented. The United States has had side letters with Israel involving other types of aid to Israel which include 50 percent U.S. shipping preference requirements.

The State Department was invited to testify at the September 1992 cargo preference hearing. At that time, the \$10 billion Israeli Loan Agreement had not been signed. The State Department refused to send a witness.

The Subcommittee has once again requested that the State Department appear before the Subcommittee to discuss the Israel Loan Agreement, which was signed January 5, 1993. There is no Buy American or Ship American requirement in the Agreement.

### III. CARRIAGE OF U.S. MILITARY CARGO

The Military Sealift Command of the Department of the Navy is responsible for the carriage of military supplies and other DOD-generated cargo. MSC negotiates the contracts with U.S.-flag carriers for the transportation of preference cargo.

There have been disputes in the past between MSC and the carriers over various aspects of enforcing the cargo preference laws. An attempt was made in the Senate in the last two weeks of the Session last year, to include language in the Department of Defense Authorization bill (DOD bill) enumerating requirements for the carriage of military cargo by U.S.-flag carriers. The Subcommittee on Merchant Marine received many complaints about the Senate language. Members of the Committee on Merchant Marine and Fisheries were conferees on the DOD bill and requested Chairman Les Aspin delete this provision so that the question could be reviewed more comprehensively by the Committee. Our Members agreed to hold an early hearing on the Senate provisions. The language was deleted. (See S. 3114 and H.R. 5006; Public Law 102-484.)

The Senate language in the DOD bill was designed to codify the objectives originally set forth in the Wilson-Weeks Agreement. The Senate language adopted the same vessel priority system that is in the Wilson-Weeks Agreement.

H.R. 57, the United States Merchant Marine Utilization and Preference Act of 1993, was introduced by Congresswoman Bentley on January 5, 1993. It includes provisions similar to the Senate language which was deleted in last year's Senate DOD bill. The bill has been jointly referred to both the Merchant Marine and the Armed Services Committees.

-5-

H.R. 57 prioritizes the use of U.S.-flag vessels carrying military cargo by requiring the maximum use of privately-owned U.S.-flag vessels first. If transportation needs cannot be met by those U.S.-flag vessels, then MSC can use time or voyage charters of privately-owned U.S.-flag vessels. Next, MSC may use its own vessels; and, finally, it may use foreign-flag vessels as a last resort.

The bill also provides that the Chief of Naval Operations is to be responsible for Government-owned vessels or Government-chartered vessels when transporting DOD cargo in areas not served by privately-owned U.S.-flag merchant vessels or when there is partial or full mobilization. Otherwise, MSC is to be responsible for the ocean transportation of DOD cargoes.

A nucleus fleet under the jurisdiction of DOD would also be established by the bill. The nucleus fleet may be comprised of: (1) Government-owned vessels operated either by MSC or by U.S. companies with commercial crews, or (2) privately-owned U.S.-flag vessels that are chartered by DOD. Vessels may be added under full mobilization conditions by the Secretary of Transportation in accordance with the priority system in the bill.

The last section of the bill prohibits Ready Reserve Force vessels from being used in competition with U.S.-flag commercial vessel operators in the carriage of military cargoes.

#### STAFF CONTACTS

Majority: Cher Brooks, x63533

Minority: Hugh N. (Rusty) Johnston, x63492

cc: Members, Committee on Merchant Marine and Fisheries

**DEPARTMENT OF TRANSPORTATION  
STATEMENT OF THE ACTING MARITIME ADMINISTRATOR**

**RICHARD E. BOWMAN**

**BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE  
OF THE COMMITTEE ON MERCHANT MARINE AND FISHERIES**

**U.S. HOUSE OF REPRESENTATIVES**

**OVERSIGHT HEARING ON FEDERAL AGENCY COMPLIANCE WITH  
AND ENFORCEMENT OF CARGO PREFERENCE LAWS**

**FEBRUARY 24, 1993**

Mr. Chairman, members of the Committee, my name is Richard Bowman and I am the Acting Maritime Administrator of the Department of Transportation. I am here today at your request to comment on cargo preference issues and respond to your questions.

U.S. cargo preference programs are part of the overall statutory scheme to support the privately owned and operated U.S.-flag merchant marine. They require that a certain percentage of government-impelled cargo be carried on U.S. vessels. This is a very important program for the maintenance of a U.S. merchant fleet. Our Nation continues to require militarily useful U.S.-flag vessels.

As this Committee knows well, the ships that carry these cargoes provide important jobs for American seafarers. Cargo preference guarantees the availability of cargo to U.S.-flag ships and is important to the financial viability of U.S.-flag operators.

In your letter of invitation, Mr. Chairman, you requested that the Department of Transportation express its views on cargo preference as it relates to the Government of Kuwait's efforts to rebuild its country, and to the Government of Israel's use of U.S. goods and services in connection with the five-year \$10 billion loan guarantee program passed by Congress last year.

MARAD is extremely disappointed that the Government of Kuwait has avoided significant utilization of U.S. carriers in the rebuilding of its country. The response to our attempts to secure Kuwait's reconstruction cargo has been particularly disheartening given the major role that the U.S. military played in helping to free Kuwait from Iraqi aggression, and the role of the U.S. merchant marine in carrying military cargo to support that effort.

## 3

U.S.-flag ships have been virtually excluded due to a clause in Kuwait's Council of Minister's Resolution 47/86 which gives the right of first refusal to carry this Kuwaiti government-controlled cargo to the United Arab Shipping Company. For almost two years MARAD has worked with the Department of State to encourage Kuwait to rescind this discriminatory policy. MARAD and U.S. Embassy officers met many times trying to convince the Government of Kuwait to change this policy. The U.S. Ambassador to Kuwait was personally involved. As recently as a January 6, meeting with Kuwaiti government officials, the Ambassador relayed a letter from the former Maritime Administrator denying Kuwait a retroactive waiver to carry Export-Import Bank cargoes on Kuwaiti-flag vessels. MARAD's denial of the waiver was based on Kuwait's continued discriminatory treatment of U.S.-flag vessels. Unfortunately, these efforts have produced no results.

We have examined the cargo preference implications of the program for loan guarantees to Israel that was established by Title VI of the Foreign Operations Appropriations Act for FY 1993. These

guarantees provide a significant economic benefit for Israel, and the law anticipates that the amount of U.S. goods and services purchased by Israel will substantially increase as the Israeli economy improves. We therefore see the potential for increased use of U.S. goods and services, including U.S.-flag vessels, resulting from this program or the improved economic climate in Israel.

Along these lines, on December 3, 1992, the former Administrator wrote to the Assistant Secretary of State for Near Eastern Affairs regarding cargo preference language in the \$10 billion loan guarantee program. The Maritime Administration received a response on January 6, 1993. The Department of State pointed out that the authorizing legislation did not contain any cargo preference requirement, and further stated that most individual projects could not be identified separately. With your permission, Mr. Chairman, I have copies of these letters to be submitted for the record of this hearing.

Mr. Chairman, you have also requested the Department's views on H.R. 57, introduced by Congresswoman Bentley, to amend the Cargo Preference Act of 1904 in title 10 of the United States Code, to clarify the preference for U.S.-flag merchant vessels in the carriage of Department of Defense (DOD) cargoes. The 1904 Act requires only U.S.-flag vessels to be used in the transportation by water of supplies bought for the armed forces, unless the freight charged for those vessels is excessive or otherwise unreasonable. H.R. 57 would revise the 1904 Act to update and codify the Wilson-Weeks Agreement of 1954 between the Secretary of Defense and the Secretary of Commerce, dealing with the utilization, transfer, and allocation of merchant ships for use by DOD.

The Administration is developing a position on this bill. The Department believes that, before any legislation is considered by this Subcommittee, the Secretary of Transportation should be given the opportunity to review the important issues raised in H.R. 57 and attempt to resolve them through the collaborative process within the Administration. The guiding principles are to preserve the military's

flexibility to meet international crises and to proscribe competition by the government with the commercial sector.

As was noted at this Subcommittee's first oversight hearing on cargo preference issues, MARAD takes its mandate to monitor the implementation of cargo preference laws by other government agencies very seriously, including our authority to establish rules under which preference programs operate. At his Senate confirmation hearing, Secretary Peña stated his support for our Nation's cargo preference laws. MARAD will continue to aggressively monitor compliance by both military and civilian agencies.

Mr. Chairman, this completes my statement and I will be glad to answer any questions that you and members of the Subcommittee may have.



# KUWAIT EMERGENCY RECOVERY PLAN

Tel: (965) 240.2477  
Fax: (965) 241.4910



جهاز الاشراف والمتابعة  
لجنة خطة الطوارئ واعادة البناء

Date 8th March 1992

التاريخ

Capt. Warren G. Leback,  
Maritime Administrator,  
U.S. Department of Transportation,  
Maritime Administration,  
400 Seventh Street S.W.,  
WASHINGTON, D.C. 20590.  
U.S.A.

Fax No. 00.1.202.366.3890

Dear Capt. Leback,

As per a Ministerial decision based on a Government decree, Kuwait Investment Authority (KIA) was appointed as the authorised body to undertake all external borrowings on behalf of the State of Kuwait, including the utilisation of the U.S. ExIm Bank facility. During the occupation period, Kuwait Emergency and Recovery Programme (KERP) was authorised to conduct all government purchases including goods and services of U.S. origin.

We are aware that one of the ExIm Bank requisites for financing against their guarantee is that the product must have been shipped from the United States on an "American Flagged" vessel. Although most of our purchases do meet this requirement, there were several shipments of cars, trucks, buses and heavy equipment that were shipped on non-American flagged roll-on/roll-off vessels. According to our logistics contractor, CSX/Sealand Logistics, a U.S. entity, at the time these shipments took place, there were no American roll-on/roll-off vessels available offering liner service to Kuwait in particular or to the Middle East in general.

Based on the latter and in view of the fact that there were no American vessels available, an application may be made to the Maritime Administrator for a waiver of the above mentioned requirement. This letter is to advise you that we intend to petition your office for such waiver on an individual shipment basis.

2 3/9/92

U.S. Dept. of Transportation  
Letter of March 1992

Page 2

Kuwait Investment Authority, in its capacity as borrower's agent for the Government of the State of Kuwait, will be applying for such waivers on behalf of Kuwait Emergency and Recovery programme. Your assistance in providing KIA directly with your requirements and procedures for waiver application will be greatly appreciated. We would be grateful if you could address your reply by letter or facsimile to :-

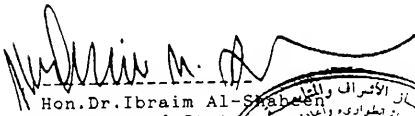
Mr. Ahmad Abdul Qader,  
Director,  
Debt Management Office,  
Kuwait Investment Authority,  
P.O. Box 64, Safat 13001,  
KUWAIT.

Tel: (965) 243.9595 Ext.702  
Fax: (965) 245.4059

If it is more convenient, information can be forwarded to KIA through CSX/SeaLand Logistics' office in Alexandria, Virginia. At CSX you may contact Mr. John McGee whose phone number is 703.739.4867.

We wish to thank you in advance for your co-operation and look forward to hearing from you as soon as possible.

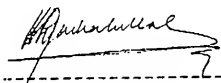
With kind Regards,

  
Hon. Dr. Ibrahim Al-Sabah  
Minister of State,  
Municipality Affairs,  
G.O.K.- K.E.R.P.



c.c. Mr. Abdullah A.  
Managing Director,  
Kuwait Investment Authority,  
P.O.Box 64,  
Safat 13001  
KUWAIT. (Fax + 965.245.4059)

c.c. CSX/SeaLand Logistics,  
{Fax {703} 739.4867}

  
Md. Farhatullah  
Advisor, Banking & Finance  
G.O.K.- K.E.R.P.





U.S. Department  
of Transportation

Maritime  
Administration

400 Seventh Street, S.W.  
Washington, D.C. 20590

26 MAR 1992

Mr. Ahmad Abul Qader  
Director  
Debt Management Office  
Kuwait Investment Authority  
P.O. Box 64, Safat 13001  
Kuwait

Dear Mr. Qader:

This is regarding your letter dated March 8, 1992, to Captain Warren G. Leback, Maritime Administrator, requesting information on the Maritime Administration's (MARAD) requirements and procedures for obtaining shipping waivers (general and statutory) applicable to ocean cargoes shipped under Export-Import Bank (Eximbank) Credit Agreements.

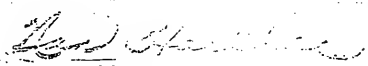
MARAD may grant a general waiver permitting up to 50 percent of the cargo generated by an individual loan/guarantee to be shipped on vessels under the flag of the recipient nation. MARAD's policy concerning general waiver requests is to process such requests that are submitted by a signatory to the loan/guarantee agreement, i.e., the borrower or the primary U.S. supplier, on behalf of the borrower. Also, our policy is that we do not process a general waiver request until the loan/guarantee agreement has concluded with Eximbank.

MARAD may also grant statutory waivers permitting a specific shipment to be made on a foreign-flag vessel if a U.S.-flag vessel is not available to accommodate the cargo. Enclosed is an informational sheet detailing the data necessary for processing statutory waivers.

In regard to the individual shipments referenced in your letter which have already moved without the benefit of a waiver from MARAD, please be advised that MARAD is not in a position to consider any waiver requests on a retroactive basis. In order to process any requests for statutory waivers based upon the nonavailability of U.S.-flag vessels, the waiver request must be made prior to the date of shipment along with the specific details of the proposed shipment as outlined in our statutory waiver enclosure.

If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

A handwritten signature in dark ink, appearing to read "Nan Harllee", written over a horizontal line.

Nan Harllee  
Associate Administrator  
for Marketing

Enclosure

cc: Mr. William Brickhill, Eximbank

18 DEC 1992

Mr. Abdullah A. Al Gabandi  
Managing Director  
Kuwait Investment Authority  
Ministries Complex - Block No. 3  
P.O. Box 64, Safat 13001  
Kuwait

Dear Mr. Al Gabandi:

Thank you for your November 1, 1992, letter addressed to the Secretary of Transportation requesting a retroactive waiver from the Maritime Administration (MARAD) of the shipping requirements that all equipment financed by the Export-Import Bank of the United States (Eximbank) which is transported by ocean vessel must be transported on vessels of United States registry. Your request covers 73 shipments made on foreign-flag vessels without a waiver from MARAD. Your waiver request is pursuant to Export-Import Bank Guarantee No. APO 63806.

In your letter you indicate awareness that MARAD as a matter of policy does not consider waiver requests on a retroactive basis. Nevertheless, you describe circumstances related to the shipment that, in your view, merit special consideration. I must inform you, however, that MARAD is unwilling to consider your request because of present Government of Kuwait (GOK) restrictions relating to a discriminatory shipping practice encountered by U.S.-flag carriers serving Kuwait.

This issue arises from the policy of the GOK which accords to the United Arab Shipping Company the right of first refusal on all cargo shipments entering Kuwait for use in GOK development projects. This GOK policy denies access by U.S.-flag carriers to GOK project cargo, as well as commercial cargoes. The United States Government has raised this issue several times over the last year with the GOK but it continues in effect. Thus MARAD is unable to approve your waiver request. When the GOK removes this restriction, MARAD will be in a position to consider a waiver request.

If, in the future, such a waiver is granted, U.S. carriers must receive 50% of all cargo generated by the Eximbank guarantee (calculated to include the initial shipments which have already

moved via foreign flag). In addition, in return for the waiver U.S. carriers would have to be able to carry Kuwaiti cargoes to which they would not otherwise be entitled by law equal to the cargoes which moved via foreign-flag prior to the granting of a waiver.

If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

~~Sgt. Captain Warren G. Leback~~

CAPTAIN WARREN G. LEBACK  
Maritime Administrator

420-JTreichel:800-CBrady:mgv:12-16-92  
cc: 100 110/115 400 420 800 860(4)  
file name: general\kia-3



U.S. Department  
of Transportation

Maritime  
Administration

Administrative

401 Salem Street, N.E.  
Washington, D.C. 20590

0 3 DEC 1992

Mr. Edward P. Djerejian  
Assistant Secretary for Near Eastern Affairs  
U.S. Department of State  
Room 6242  
Washington, DC 20520

Dear Mr. Djerejian:

This is concerning the United States Government's decision to provide \$10 billion in loan guarantees to the Government of Israel (GOI). We understand that this new assistance package for the GOI is a continuation of our Government's policy, reflected in 1991 through its \$55 million Export-Import Bank housing guarantee and the \$400 million Agency for International Development (AID) guarantee, in response to the GOI's requests for assistance in the resettlement of refugees emigrating to Israel.

Our concern is to ensure that the application of the cargo preference statutes, P.L. 664, 46 App. U.S.C. 1241(b), the umbrella cargo preference law, and the Maritime Administration's (MARAD) responsibilities relative to this Act are addressed in the official documentation exchanged between the United States Government and the GOI that provides for this assistance.

For the Export-Import Bank housing guarantee, cargo preference requirements were included in the documentation for the funds. In 1991, through correspondence among the GOI, AID and MARAD, the GOI agreed to comply with cargo preference requirements as applied to the \$400 million AID housing guarantee. For the 1991 guarantee, the agreement between the GOI and AID states that "The Borrower agrees to continue to use its best efforts to maximize procurement of U.S. goods and services...To the extent that A.I.D. financing is used for such procurement under the Project, all applicable United States laws shall be complied with in such procurement." In his letter of April 28, 1991, to MARAD, the GOI Minister for Economic Affairs Amnon Neubach clarified this language by stating that any procurement of goods made under the housing guarantee was subject to the Cargo Preference Act of 1954. Therefore, the inclusion of the appropriate cargo preference requirements in this new guarantee

initiative is consistent with prior application of cargo preference requirements to loan guarantees to the GOI. Accordingly, we suggest that the new guarantee contain the following language:

"U.S. law, 46 App. USC 1241(b), requires that 50 percent of any equipment, materials, commodities, which is transported by ocean vessels as a result of this assistance, must be transported aboard privately owned U.S.-flag commercial vessels. To monitor this activity, the U.S. Maritime Administration requires that for each such shipment, a copy of the freighted, on-board ocean bill of lading be forwarded to this office within 30 days of the loading date reflected on the document. The bills of lading are to be sent to: Office of National Cargo and Compliance, U.S. Maritime Administration, 400 Seventh Street, SW, Room 7209, Washington, DC 20590. A notation should be made upon submission that the bill of lading reflects a shipment sponsored by the U.S. State Department to the Government of Israel under the \$10 billion guarantee program. The Maritime Administration may be contacted at (202) 366-4610 for information."

It is important to note that there is no cost differential between the U.S.-flag liner carriers and the Israeli-flag liner carriers serving the U.S./Israel trade because both nations' carriers are members of the same ocean shipping conference. Consequently, the inclusion of the cargo preference requirements in the \$10 billion guarantee would have no adverse financial impact on the GOI.

In view of the foregoing, we request your assistance in ensuring that the cargo preference language provided is included in the operational procedures of the \$10 billion agreement between the United States Government and the GOI. We would also appreciate being provided with a copy of the final agreement and the names of the GOI officials that will have responsibility for providing documentation to MARAD under the agreement.

If the Department has any questions on this matter, please contact Mrs. Judith Blackman at (202) 366-4610. Thank you for your cooperation and assistance.

Sincerely,

Sgd. Captain Warren G. Leback

CAPTAIN WARREN G. LEBACK  
Maritime Administrator

cc: Mr. Scott Spangler  
Acting Administrator  
Agency for International Development



United States Department of State  
*Assistant Secretary of State for  
Near Eastern and South Asian Affairs*  
Washington, D.C. 20520-6258

January 6, 1993

Captain Warren G. Leback  
Maritime Administrator  
Maritime Administration  
U.S. Department of Transportation  
400 Seventh Street, S.W.  
Washington, D.C. 20590

Dear Captain Leback:

Thank you for your letter of December 3rd regarding the U.S. loan guarantee program for Israel.

This program was established to assist Israel in absorbing the large numbers of immigrants it is receiving from the former Soviet Union and elsewhere. It is distinct in significant ways from previous \$55 million Export-Import Bank and \$400 million Agency for International Development loan guarantees for immigrant housing programs in Israel which were subject to separate bilateral implementing agreements.

The current loan guarantee program was established by and is governed by Title III of Chapter 2 of Part I of the Foreign Assistance Act of 1961 with specific appropriations from the FY 93 Foreign Operations, Export Financing and Related Programs Appropriations Act. Section 226 (j) of the Foreign Assistance Act, which deals with purchases of goods and services, states:

"During the pendency of the loan program authorized under this section, it is anticipated that, in the context of the economic reforms undertaken pursuant to subsections (h) and (i) of this section, Israel's increased population due to its absorption of immigrants, and the liberalization by the Government of Israel of its trade policy with the United States, the amount of United States investment goods and services purchased for use in or with respect to the country of Israel will substantially increase."

-2-

In order to implement this section of the legislation, Israel is committed to U.S. businesses sharing the benefits of the economic growth supported by the guaranteed loans. The GOI will use its best efforts to achieve what the loan guarantees legislation anticipates, i.e., that the amount of United States investment goods and services purchased for use in or with respect to the country of Israel will substantially increase. The Joint Economic Development Group (JEDG) will regularly review progress in this area. If progress is insufficient, the GOI will identify additional measures to meet these legislative goals.

There is no specific reference in the legislation to cargo issues, nor is this legislation directly comparable to that which established the housing loan guarantees in 1991. The purpose of this legislation as explained in section 226 (a) of the Foreign Assistance Act is:

...to issue guarantees against losses incurred in connection with loans to Israel made as a result of Israel's extraordinary humanitarian effort to resettle and absorb immigrants into Israel from the republics of the former Soviet Union, Ethiopia and other countries.

In keeping with the intent of the legislation, a majority of these funds will be used to make additional foreign exchange available to the commercial banking system to support increased business sector activity. The intent of the Government of Israel is to allow the business sector the use and the benefit of these additional resources in the Israeli economy.

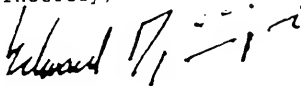
The specific end use of the funds channeled to the private sector cannot be identified separately. The guaranteed funds will be used to supplement the existing foreign exchange resources in the Central Bank. The commercial banks receiving the guaranteed funds will not be identified separately from banks receiving general foreign exchange resources. The funds will be supporting net foreign exchange needs of commercial banks and cannot be linked to specific projects, since the banks will have multiple sources and uses of foreign exchange on any given day. The legislation further states in section 226 (h), in relevant part:

Congress also recognizes that these policies (prudent macroeconomic policies and structural goals) are being designed to reduce direct involvement of the government in the economic system and to promote private enterprise, important prerequisites for economic stability and sustainable growth.

- 3 -

Implementation of the guarantees in the manner outlined above is in keeping with the legislation which clearly supports policies aimed at private sector investment and increased market efficiency. In our view, the current bilateral agreement fully satisfies the intent of the Congress with respect to this program.

Sincerely,

A handwritten signature in dark ink, appearing to read "Edward P. Djerejian", with a stylized flourish at the end.

Edward P. Djerejian



US Department  
of Transportation  
Maritime  
Administration

Administrator

400 Seventh Street, S.W.  
Washington, D.C. 20590

1 6 FEB 1993

Honorable Amnon Neubach  
Minister of Economic Affairs  
Embassy of Israel  
3514 International Drive, NW  
Washington, DC 20008

Dear Mr. Minister:

Recently the Government of Israel (GOI) concluded an agreement with the United States regarding \$10 billion in loan guarantees concerning the resettlement of refugees emigrating to Israel. Accompanying that agreement was a document entitled "Overview of the Israel Loan Guarantee Program" (Overview Paper), that is of interest to the U.S. merchant marine.

As you know, Congress advocates the utilization of U.S.-flag tonnage whenever possible. The Overview Paper provides that the GOI will use its best efforts to substantially increase its purchases of U.S. goods and services. It further notes that business leads will be provided by a forum, led by the GOI and the U.S. Department of Commerce. Since the costs for the U.S.-flag liner vessel services are the same as the Israeli flag liner vessel services between the United States and Israel, our national flag vessels should participate substantially in the anticipated increase in commerce.

We have been asked to testify before the Subcommittee on Merchant Marine on February 24, 1993, concerning the opportunities available to U.S.-flag carriers under the \$10 billion guarantee program. We believe it would be mutually beneficial to craft an agreement in the spirit of the existing cash transfer side letter which would benefit both the U.S. and Israeli merchant marine.

In order to clarify the steps that would be taken to implement the agreement, I suggest that we meet as soon as possible. We will contact your office shortly to set up a mutually agreeable time.

Sincerely,

Sgd. Richard E. Bowman

RICHARD E. BOWMAN  
Acting Maritime Administrator

U.S. Trade With Kuwait  
February 1991 - December 1992

Exports:	Carrier -----	Metric Tons -----	Percent -----
	United Arab Ship. Co.	93,981.45	43.85
	U.S. Carriers	30,115.33	14.05
	All Others	90,219.24	42.10
		-----	-----
Totals		214,316.02	100.00

Imports:	Carrier -----	Metric Tons -----	Percent -----
	United Arab Ship. Co.	36.37	2.33
	U.S. Carriers	1,335.56	85.57
	All Others	188.85	12.10
		-----	-----
Totals		1,560.78	100.00

Total Trade:	Carrier -----	Metric Tons -----	Percent -----
	United Arab Ship. Co.	94,017.82	43.55
	U.S. Carriers	31,450.89	14.57
	All Others	90,408.09	41.88
		-----	-----
Totals		215,876.80	100.00

U.S. Carriers participating in this trade consist of the following:  
Afram Lines USA, Ltd., American President Lines, Lykes Bros.  
Steamship Co., Inc., and Sea-land Service Inc.

Figures obtained from the Journal of Commerce PIERS data system.  
Typed summaries of the underlying PIERS reports are attached. In  
an attempt to concentrate on the "liner-type" cargoes, bulk cargoes  
and tonnages carried by Hoegh Ugland Auto Liners have been removed  
from the above totals.

Prepared by: Division of International Trade  
U.S. Maritime Administration  
February 25, 1993

Attachments(2)

EXPORTS TO KUWAIT  
FEBRUARY 1991 - DECEMBER 1992

<u>CARRIER</u>	<u>METRIC TONS</u>	<u>PERCENT</u>
Atlantic Container Line	3.62	.00
Afram Lines USA, Ltd.	934.49	.24
American President Lines	10,250.47	2.69
Hoegh Ugland Auto Liners	105,986.00	27.91
BULK 1/	59,362.30	15.63
Compagnie Generale Maritime (CGM)	97.73	.02
Cho Yang Shipping Co., Ltd.	671.94	.17
Croatia Line		
*(formerly Jugolinija)	9,710.61	2.55
Evergreen Line	95.88	.02
Hapag Lloyd	159.43	.04
Jugolinija (now Croatia Line)	13,449.25	3.54
K Line (Kawasaki Kisen Kaisha)	81.98	.02
Lykes Bros. Steamship Co., Inc.	11,292.04	2.97
Maersk Line	34,227.61	9.01
Mediterranean Shipping Co.	52.45	.01
Norwegian Specialist Auto Carrier	748.46	.19
Nedlloyd Lines	197.15	.05
National Shipping Co.		
of Saudi Arabia	6,757.34	1.77
NYK Line	1,897.03	.49
Mitsui OSK Line	55.85	.01
P & O Containers Ltd.		
*(formerly Trans Freight Lines)	2,494.23	.65
Polish Ocean Line	7.87	.00
Sanko	283.80	.07
Sea-Land Service, Inc.	7,638.33	2.01
Senator Line	3,433.91	.90
Texas American Shipping Corp.	7,701.42	2.02
United Arab Shipping Co.	93,981.45	24.75
Westfall Larsen	2,999.84	.79
Yangming Marine Line	3.27	.00
ZZZZ	5,088.57	1.34
Totals:	379,664.32	99.86

Figures obtained from the Journal of Commerce PIERS data.

1/ "BULK" designates those shipping lines which do not provide regular service to the United States.

2/ "ZZZZ" is used for those shipping lines which cannot be determined from the available documentation.

Prepared by: Division of International Trade  
U.S. Maritime Administration  
February 25, 1993

IMPORTS FROM KUWAIT  
FEBRUARY 1991 - DECEMBER 1992

<u>CARRIER</u>	<u>METRIC TONS</u>	<u>PERCENT</u>
American President Lines	324.86	.15
BULK <u>1</u> /	212,816.19	99.27
Croatia Line (formerly Jugolinija)	70.86	.03
Lykes Bros. Steamship Co., Inc.	349.08	.16
Maersk Line	117.99	.05
Sea-Land Service, Inc.	661.62	.30
United Arab Shipping Co.	36.37	.01
Totals:	214,376.97	99.97

Figures obtained from the Journal of Commerce PIERS data.

1/ "BULK" designates those shipping lines which do not provide a regular service to the United States.

Prepared by: Division of International Trade  
U.S. Maritime Administration  
February 25, 1993

QUESTION: What countries have you identified as having cargo preference programs?

ANSWER: The following is a list of countries that reportedly maintain some type of formal cargo preference program. The list is based primarily on survey responses compiled for MARAD's periodic publication, Maritime Subsidies.

Algeria	Mexico
Bangladesh	Morocco
Brazil	Nigeria
Chile	Pakistan
Colombia	Peru
Ecuador	Philippines
Egypt	Portugal
France	Saudi Arabia
Germany	Spain
Ghana	Sri Lanka
Honduras	Taiwan
India	Thailand
Indonesia	Turkey
Israel	United Kingdom
Italy	United States
Ivory Coast	Uruguay
Korea	Venezuela
Kuwait	
Malaysia	

Note: In addition to these countries there may be others in which certain commercial practices, nationalist tendencies, or the dynamics of a country's economic system, have the effect of favoring national carriers. One example would be China, where lack of information concerning their laws makes it difficult to ascertain what formal preference programs exist, but it can be presumed that its centralized economic system--in spite of some efforts to introduce market reforms--tends to favor the choice of national carriers by shippers (particularly for imports).



Comparison of Tonnage of Cargo Preference Programs  
Versus Commercial Cargo Carried  
In U.S. Oceanborne Foreign Trade  
For The Years 1989, 1990 and 1991

	1991 <sup>2/</sup> (000 mt)	1990 (000 mt)	1989 (000 mt)
Commercial Cargo <sup>1/4/</sup>	855,379	879,395	856,053
Total Cargo Preference <sup>3/5/</sup> <sub><sup>6/7/8/</sup></sub>	21,880	21,752	16,066
Pct of Total Cargo Pref./Commercial	2.6%	2.5%	1.9%
U.S.-flag carrying under Cargo Preference <sup>3/5/6/7/8/</sup>	17,166	16,913	12,909
Pct of U.S.-flag under Cargo Pref./Commercial	2.0%	1.9%	1.5%

<sup>1/</sup>Source of data: Bureau of Census (A) includes government sponsored cargo; (B) excludes translatkes cargo; and (C) adjusted to include Military Sealift Command cargo. Prepared by Office of Trade Analysis and Insurance Division of Statistics.

<sup>2/</sup> Preliminary data.

<sup>3/</sup> Does not include Southern Region Amendment or Israeli Cash Transfer cargoes.

<sup>4/</sup> Data based on a statistical month reflecting when Bureau of Census processes data.

<sup>5/</sup> Data based on bill of lading date.

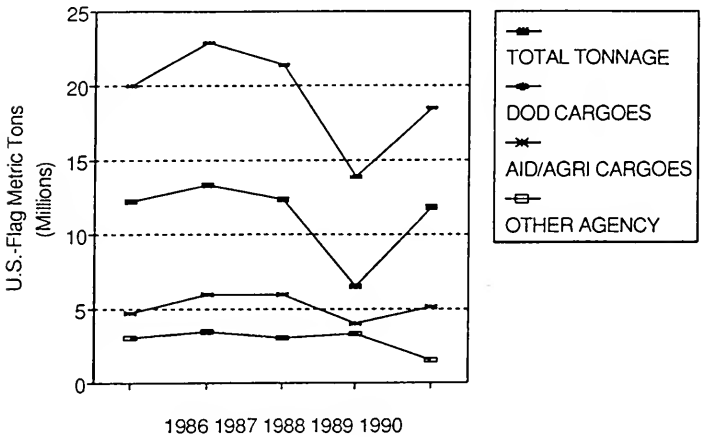
<sup>6/</sup> Certain agricultural programs are based on a cargo preference year, April 1 through March 31.

<sup>7/</sup> Some cargo preference program may reflect data which did not originate in or destined to the U.S.

<sup>8/</sup> Does not include household good moved under Department of Defense.

# GOVERNMENT SPONSORED CARGOES

## CALANDAR YEARS 1986 - 1990



GOVERNMENT SPONSORED CARGOES - U.S.-FLAG METRIC TONNAGE  
CALANDAR YEARS 1986 - 1990

	1986	1987	1988	1989	1990
AID - AGRICULTURE	4,679,548	5,978,488	5,936,871	4,081,499	5,151,605
DEPT OF DEFENSE	12,185,685	13,360,489	12,368,499	6,448,603	11,782,923
CIVILIAN AGENCIES	3,088,071	3,495,666	3,077,851	3,271,098	1,587,126
TOTAL METRIC TON	19,953,304	22,834,643	21,383,221	13,801,200	18,521,654

**Statement of  
William V. Brierre  
Senior Vice President - Washington Division  
Lykes Bros. Steamship Co., Inc.**

**Before the  
Subcommittee on Merchant Marine  
of the  
Committee on Merchant Marine and Fisheries**

**Concerning  
  
Compliance of Various Federal Agencies with the  
Current Cargo Preference Laws**

**February 24, 1993**

STATEMENT OF WILLIAM V. BRIERRE, SENIOR VICE PRESIDENT, LYKES BROS. STEAMSHIP COMPANY, WASHINGTON, D.C.

Thank you, Mr. Chairman. I am William V. Brierre, Senior Vice President, Washington Division, Lykes Bros. Steamship Co., Inc. Lykes is a New Orleans-based U.S. company which has been in business for ninety-three years and operates thirty-seven liner vessels, both container and multipurpose, from the U.S. Gulf and East Coast to world-wide destinations except Brazil, Argentina, New Zealand and Australia. I am here today as part of the U.S. flag carrier panel that is concerned about many issues that involve the compliance by Federal agencies with the cargo preference statutes.

The record of the September 30, 1992, hearing before the Subcommittee on Merchant Marine demonstrated that the Department of Defense in numerous areas has not been complying with the intent of both the 1904 Act and P.L. 664. Particular focus was made in the hearing about DOD's failure to follow the terms of the Wilson-Weeks Agreement.

Lykes understands that H.R. 57 was drafted as an effort to ensure that DOD would comply with, among other things, the Wilson-Weeks Agreement. In this regard, Lykes is concerned that the Wilson-Weeks Agreement should be updated to reflect the current operation and composition of the U.S. flag merchant fleet and the Maritime Administration's broad administrative authority to enforce P.L. 664, that was provided in the Merchant Marine Act of 1970, before H.R. 57 or some other proposed legislation is enacted. In this regard, Lykes is committed to working with the Subcommittee, the industry and Government to address both the shortcomings of the Wilson-Weeks Agreement and proposed Congressional legislation that would ensure compliance by DOD with the cargo preference statutes.

There are other issues, some of which surfaced at the September 30, 1992 hearing, and others that were not considered at that time, which I would briefly like to address.

Recently, Congresswoman Helen Delich Bentley wrote to the Secretary of State requesting that our Government redouble its pressure on the Government of Kuwait to remove its discrimination against U.S. carriers. The government of Kuwait requires that the United Arab Shipping Company be given the right of first refusal on all Government of Kuwait project cargoes which, in effect, is an exclusionary policy on 100% of all project cargo moving to Kuwait from the U.S. This problem is intolerable, since it has been known to our Government for nearly two years and nothing meaningful has been done to rectify it. A similar situation has existed for approximately three years with the Government of Turkey, which also results in discrimination against U.S. carriers. In the case of Kuwait, MARAD has denied a request from Kuwait for a waiver under an Export-Import Bank program. Unfortunately, this has not resolved the problem. The problem continues to exist and U.S. flag vessels are still losing cargoes.

My point in mentioning these two discrimination problems is to demonstrate that the current process that our Government and its agencies employ in addressing these matters is ineffective. Greater emphasis must be placed on reacting to discrimination against U.S. flag carriers. Stronger legislation must be enacted to enable our Government to effectively react to foreign governments' discrimination to minimize the losses that are incurred by the U.S. flag carriers because of the protracted process that now is employed when we are discriminated against. There should be closer coordination between the State Department, the Transportation Department and the Federal Maritime Commission in addressing this problem.

One of the issues that the Subcommittee attempted to review in the September 30, 1992 hearing was the \$10 billion in loan guarantees for Israel. We note that since the State Department did not provide a witness to testify at the hearing, the matter was not resolved. We now find that the first \$2 billion in loan guarantees has been provided to Israel, and that there is no binding requirement that U.S. flag vessels will be used, where they are available, to transport at least 50% of cargoes that result from these funds. Our concern about this loan guarantee foreign assistance package is that it may be used as a precedent for additional loan guarantee foreign assistance initiatives in an effort to exclude coverage of P.L. 664. One need only to look to the record of the first Cash Transfer assistance, which also occurred with Israel in 1978, to understand our concern. Cash Transfers which are exempt from P.L. 664 have been expanded far beyond Israel to include many other countries, the best example being Egypt. An examination of both countries' U.S. Government economic assistance prior to the Cash Transfers reveals that the Commodity Import Program (CIP) required both the procurement of U.S. goods and the carriage of at least 50% of those goods on U.S. flag vessels. Cash Transfer assistance has totally eliminated the CIP in the case of Israel, and significantly reduced Egypt's CIP with a commensurate loss of cargo for U.S. carriers.

The current \$10 billion in loan guarantees, like Cash Transfer, this program has no requirement to spend the money in the U.S., so it is another job export program. Expansion of this form of assistance whether or not it replaces CIP is bad for everyone. It is essential that P.L. 664 be amended to ensure that loan guarantee assistance will not be exempt from its coverage to ensure that the erosion of P.L. 664 does not continue.

Finally, Mr. Chairman, it is apparent not only from the testimony that was provided at the September 30, 1992 hearing but also from many events that have occurred both before and subsequent to the hearing, that MARAD's authority for oversight provided under Cargo Preference Act of 1954, P.L. 664, must be significantly enhanced.

Recently, the Agency for International Development (AID) instituted a series of "Loading Delay Assessment" penalties (LDA) on liner shipments under the P.L. 480, Title II and the AID Loans and Grants Programs. These provisions provide that U.S. flag liner companies bidding on liner parcels of cargoes that may have loading dates as much as six to eight weeks in the future, must load these cargoes, if awarded, within a seven day period of the projected loading dates. If they do not accomplish this, penalties such as one dollar per ton, per day, and/or forfeiture of "presentation bonds" or "performance bonds" and/or liquidated damages are assessed.

Liner carriers serve many shippers with regularly scheduled, advertised sailings. A.I.D. is only one of the shippers on any given voyage. Delays on trade routes to the developing world, such as to countries in East Africa, are virtually impossible to avoid. If each shipper arbitrarily imposed penalties for delays in the way that A.I.D. has, U.S. flag liner service would no longer be viable. A.I.D.'s Loading Delay Assessment is especially offensive because delays of discharging desperately needed food for Somalia in the port of Mombasa, Kenya, were the direct result of inaction by the receiver of the A.I.D. cargo. Lykes vessels were held up for weeks in the port of Mombasa unable to discharge badly needed food for Somalia because the A.I.D. receiver of the cargo either would not or could not supply the necessary trucks to take delivery of the food. At the same time, A.I.D. in Washington was imposing loading delay penalties on Lykes vessels for delays in arriving at the U.S. port of loading, delays that were caused by the receiver of the A.I.D. foodaid for Somalia. Attempts to enlist the support of A.I.D. to have the receiver in Mombasa show more interest in taking the cargo were ineffectual. Such instances make A.I.D.'s argument that the Loading Assessment Delay penalty is necessary to ensure timely delivery of the foodaid to the hungry sound very hollow indeed.

When a U.S. flag carrier takes exception to the Loading Assessment Penalty in its offer to carry A.I.D. cargo, A.I.D. unilaterally disqualifies the carrier. In several instances this has resulted in A.I.D. determining that there is no U.S. flag carrier available to carry the cargo and has then booked the cargo with a foreign flag carrier. The use of the Loading Delay Assessment as a basis for determining non-availability of U.S. flag service under P.L. 664 solely because U.S. flag liner carriers refuse to accept this unfair penalty is in conflict with MARAD's authority under P.L. 664. It is our understanding that, under the Merchant Marine Act of 1970, it is MARAD, not A.I.D., that sets the criteria for determination of non-availability of U.S. flag service. Programming agencies such as A.I.D. may not arbitrarily construct their own criteria for determining non-availability of U.S. flag service, yet A.I.D. continues to do so.

The LDA situation demonstrates that programming agencies such as A.I.D. and in a somewhat different way, DOD, feel that they can

operate their programs apart from MARAD and P.L. 664. Clearly, much stronger and more appropriate authority must be developed for P.L. 664 and MARAD to ensure that compliance with this law is achieved. We look forward to the opportunity to work with everyone concerned to accomplish this end.

Thank you Mr. Chairman. I will be glad to answer any questions that you or the other Subcommittee Members may have regarding these and other cargo preference issues.

## LYKES BROS. STEAMSHIP CO., INC.

OWNERS

*Lykes**Lines*WILLIAM V. BRIERRE, JR.  
SENIOR VICE PRESIDENT

WASHINGTON, D.C.

March 29, 1993

The Honorable William O. Lipinski  
Chairman, Subcommittee on Merchant Marine  
U.S. House of Representatives  
Washington, D.C.

Dear Chairman Lipinski:

Thank you for your letter of March 4, 1993. Below are my responses to the questions which you sent as a follow-up to the hearing. I hope my input is helpful and I apologize for my tardiness.

- (1) Liner service is advertised, regularly scheduled common carrier service between specific origin and destination port ranges, i.e., on a prescribed trade route. There are many shippers' cargo on any sailing. Liner service is typically provided with liner-type vessels, such as, geared or gearless container vessels, geared multipurpose tweendeckers, RO/RO vessels, and LASH vessels.

Tramp service is unadvertised opportunistic service offered usually on a full cargo or charter basis (one ship, one shipper, one consignee). Tramp service in the U.S. trades is offered by dry bulk carriers and liquid bulk carriers or tankers. The term tramp, by the way, is not a pejorative, but a term of art.

A time charter is the lease of a vessel by an owner to a charterer for a specified period, wherein the owner typically provides the crew and all provisions, subsistence, wages, bonuses and all other charges pertaining to the crew, all insurance on the vessel and crew, and all cabin, deck, engine room and other necessary stores. The owners also must exercise due diligence to maintain the vessel in a seaworthy condition as well as keep her in a thoroughly efficient state as regards hull, machinery and equipment during the period of the charter.



The charterers typically provide for all fuel, water for boilers, port charges, pilotage, launch hire, lights, solid ballast, tug assistance, etc., namely those expenses incurred during the normal commercial operation of a vessel.

Under a voyage charter, owners put a crewed vessel at charterers' disposal for the carriage of a full cargo or part cargo from one or more ports to named port(s) of destination or ports within a certain range at rates mutually agreed in advance. Typically, in a voyage charter, unlike a time charter, owners have to defray all operating expenses, such as, port charges, cost of bunkers, loading and discharging expenses, agency fees, commission, brokerage, etc., out of the freight.

- (2) At present, only one of our vessels, SS MARJORIE LYKES, a multipurpose tweendecker, is under charter to the Military Sealift Command.

Lykes's liner contract business with the Dept. of Defense represents approximately 15-20% of all of its liner business on an annual basis.

- (4) As many as 13 of our vessels were chartered to MSC during the Persian Gulf War -- 1 RO/RO, 1 geared container vessel, and 11 multipurpose tweendeckers.

We offered liner service on twelve container vessels in an intermodal pipeline via Europe, the Mediterranean, and via direct all-water service to Dammam. We moved 21,000 containers.

We were also able to provide ad hoc service with our own U.S. flag vessels or with chartered foreign tonnage for spot requirements for cargo movements between Europe and Dammam.

- (6) There are a variety of reasons for the decline in cargo preference:

First, the various U.S. government agencies' attempts to circumvent cargo preference requirements have contributed to it, whether by just ignoring the requirement, failing to enforce the requirement with their subcontractors, or creating or structuring programs so that cargo preference does not apply. Examples of some or all of the above can be seen at the Department of Defense, the Agriculture Department, the Agency for International Development and the Export Import Bank.

Second, the Administration's policy regarding "neither expanding nor contracting cargo preference" created an atmosphere that encouraged the above activity.

Third, the Maritime Administration is apparently succumbing to the reality that the enforcement provisions of the cargo preference laws have no teeth.

Over the last 12 years the agencies have become more difficult to the extent that they have become more creative in their efforts to avoid cargo preference.

- (10) The Maritime Administration should absolutely be the enforcement agency for cargo preference decisions and it should be unequivocal in its use of that authority.
- (12) In the case of the loading delay assessment (LDA), we appealed first to A.I.D. and made legitimate arguments for their not applying the LDA to liner carriers. We were unsuccessful so we appealed to the Maritime Administration who initially said there was nothing they could do although they did discuss the matter with A.I.D. We then appealed to Cong. Bentley to apply pressure on A.I.D. So far, it is not resolved, and the Maritime Administration is now "facilitating" discussions between A.I.D. and the carriers to help work out some agreement. MARAD is unwilling to tell A.I.D. to cease and desist even though A.I.D. is using the LDA as a reason to ship foreign flag.

Thank you for the opportunity to testify. Also, enclosed is the corrected transcript material.

Yours very truly,

W. V. Brierre, Jr.

encl.

JOINT STATEMENT

BY

AFRAM LINES (USA) CO., INC.  
AMERICAN PRESIDENT LINES  
CROWLEY MARITIME CORPORATION  
FARRELL LINES  
SEA-LAND SERVICE, INC.

ON

U.S. GOVERNMENT-IMPELLED CARGO

TO THE

SUBCOMMITTEE ON MERCHANT MARINE  
U.S. HOUSE OF REPRESENTATIVES

ON

FEBRUARY 24, 1993

Mr. Chairman, as this Subcommittee is well aware, the majority of U.S.-flag merchant ships engaged in foreign commerce are liner ships providing service between most regions of the world. This key segment of the U.S. merchant marine is faced with profound challenges. Our foreign-flag competitors operate under government regimes which provide a variety of substantial advantages compared to U.S. laws. And, in today's world of intense, international competition, companies like ours, no matter how resourceful, cannot compete successfully when we are disadvantaged.

Thus, the outcome of government deliberations such as this hearing today will determine whether the U.S.-flag will continue to fly on this fleet of ships in the next few years and whether there will even be such a fleet.

U.S. government-impelled cargo has been a vital element in the revenues of the U.S. merchant marine for well over a century. Military and civilian agency cargoes are funded by taxpayer dollars for national defense and for American foreign policy programs. Government cargo preference is based upon a logical premise:

When U.S. taxpayer dollars are in the cargo hold of a ship, there should be a U.S. flag and a U.S. crew on the ship.

Congress has long intended that various government cargo preference laws be a primary national policy component to ensure development and maintenance of a healthy U.S.-flag merchant marine of sufficient size to promote the growth of U.S. foreign and

domestic commerce and serve as a national defense auxiliary in times of national emergency. Unfortunately, some Executive Branch agencies have departed from the U.S.-flag requirement at times.

The disintegration of the former Soviet Union has brought on far-reaching changes in the U.S. defense strategy. As the defense establishment is reduced and troops are transferred to bases in the United States from abroad, there are shrinking volumes of DOD supplies and other cargoes shipped abroad. The resultant drop in U.S.-flag liner revenues aggravates an already intense competitive struggle with foreign-flag carriers who collectively have captured over 80 percent of the liner shipping market for U.S. exports and imports.

The marked reduction in U.S. government-impelled cargo movements on board U.S.-flag merchant ships is rapidly undermining the continued operation of U.S.-flag containerships and other U.S.-flag vessels. Appendix I shows the projected dramatic reduction of U.S. military sustainment and household goods cargoes in the next few years. Appendix II shows that the level of U.S.-flag revenues for Defense Department dry cargo shipments is projected to drop to one-half the 1990 level by 1995, or from \$506 million to \$253 million. In 1989 the level was about \$600 million for these DOD cargoes. This sharp contraction of U.S.-flag business is exerting tremendous pressure on the few remaining U.S.-flag operators.

Defense Department shipments are extremely important to the overall cargo preference program. With the experience of Desert Shield and Desert Storm, substantial progress has been made by government agencies in tandem with industry representatives in identifying ways in which Defense transportation procurement programs can be improved. Our statement today and the legislation we suggest therefore focus on certain key aspects of cargo preference as applied to the Department of Defense. Concerns with other aspects of the design or implementation of cargo preference programs -- such as the use of foreign aid, cash transfers, Export-Import Bank financing, humanitarian assistance, Kuwait commercial projects, late payments by civilian agencies and the enforcement of cargo preference statutes -- should also be addressed.

As this Subcommittee has heard before, the need for attention to the policies that underlie the U.S. merchant marine is **URGENT**. Unless Congress takes steps this year to address the problem, the number of U.S.-flag liner ships will drop, with a concurrent loss of U.S. seafaring jobs and defense capability. As U.S.-flag liner ships become fewer and fewer, the government will be confronted with fewer service options and, possible increased costs for government cargoes in peacetime and in war. In a crisis situation, absence of a U.S.-flag merchant fleet would severely hamper the government's ability to support defense requirements in a timely manner.

We believe that Desert Storm clearly showed that the government needs the U.S.-flag merchant marine. Sealift was proven to be essential, just as it had been in all earlier crises.

Eighty-five percent of all cargo shipped into the theater moved by sea, and 80% of that cargo moved on U.S.-flag vessels. Of the 86 cargo vessels used to support the Gulf War, 62 were U.S.-flag ships. Although 42% of the U.S.-flag dry cargo moved on liner ships, only 39% of container capacity was employed in the process and the short length of the conflict averted the necessity of diverting more containerships from support of America's civilian economy.

The Department of Defense's Mobility Requirements Study sets a goal to move 95% of all required military equipment and supplies by sea, within 30 days in a crisis. The Study projects a requirement to move 1.8 million short tons of cargo in future contingencies, 60% of which is considered containerizable. It is clear that without a U.S.-flag merchant marine, and the trained cadre of U.S. seafarers employed on U.S. ships in peacetime, the military will face substantial shortcomings in sealift.

Privately owned U.S.-flag vessel operators are very encouraged with the involvement of the United States Transportation Command (USTRANSCOM) and their Commander-in-Chief General Ronald Fogleman to strengthen the U.S.-flag merchant marine. USTRANSCOM, under authority delegated by the Secretary of Defense for establishing policy and requirements during peacetime and contingencies, is working hand-in-hand with the maritime industry to revitalize U.S.-flag shipping.

Congress must either mandate programs which will restore and build the health of a U.S.-flag liner fleet or, concluding that we are not essential to the national interest, Congress must relieve us of statutory and regulatory inhibitions upon our transferring vessels to lower cost foreign-flag operations.

The U.S.-flag liner industry, in its competitive response to the increasingly complex logistics needs of its commercial customers, has developed the world's most advanced transportation systems. The approximately 100 liner ships engaged in foreign commerce include some of the largest and most technologically advanced containerships in the world.

Intermodal terminal networks under control of U.S. operators are global in scope and are supported by state-of-the-art computer and communications networks and hundreds of thousands of containers. More than 22,000 trained professionals keep these global freight transportation systems operating day and night, throughout the year. By use of the U.S.-flag liner fleet, the U.S. government has access to their modern, highly automated intermodal networks for its impelled cargoes, just as commercial customers do.

The government, however, does not yet avail itself of some advantageous intermodal techniques because of ambiguities or outdated portions of certain statutes. This is especially true of DOD liner cargoes. U.S.-flag liner operators have developed suggested amendments to clarify this situation and we strongly encourage the Subcommittee to consider and approve



the amendments as a much needed strengthening of government-impelled cargo policy. The draft language is attached as Appendix III.

The amendment would:

1. reiterate the longstanding policy objective of maintaining and providing a preference for a strong and economically viable privately owned and operated U.S.-flag commercial merchant fleet;
2. clarify what cargoes are defined as "Department of Defense cargoes" and confirm that government-owned vessels will not compete against privately owned U.S.-flag commercial vessels;
3. call for more timely processing of freight charges and interest on late payments by the Defense Department to be at the rate applicable under the Contracts Disputes Act of 1978;
4. without diminishing recognition of the need to maintain options of port-to-port services, encourage modern intermodal contracts between U.S.-flag vessel operators and the United States Transportation Command; and
5. facilitate joint contingency planning between the United States Transportation Command and U.S.-flag liner operators.

The amendment would greatly improve the current situation wherein U.S.-flag operators are unable to provide the full range of modern logistics services to the Defense Department.

The Subcommittee asked specifically that we express our views on H.R. 57. U.S.-flag liner operators oppose H.R. 57 and we strongly urge the Subcommittee to approve our draft legislation in Appendix III rather than H.R. 57. We hasten to make clear, however, our deep appreciation for the sustained effort made by Congresswoman Bentley -- and others on this Subcommittee -- over the years to ensure government adherence to both the letter and spirit of the cargo preference laws. Rep. Bentley's introduction of H.R. 57 early this year led to this opportunity today to explain to the Subcommittee both our views on issues pertaining to military procurement of ocean and intermodal transportation, and our intense interest in achieving broader maritime reform legislation this year -- if possible, within months.

Let us reemphasize that while reforms in the government's handling of military cargo is needed, the reforms we recommend today are just one part of the set of policy issues facing the U.S.-flag liner fleet.

Broader reform of promotional, vessel construction and tax policies is urgently needed.

As Transportation Secretary Peña told the Washington Post just this week, "the U.S.-flag fleet is just about on its last legs and we've got to do something very quickly to deal with that."

Prompt action is in the national economic and defense interest.

The national defense benefits of the U.S.-flag liner fleet are well known to the Subcommittee and were reaffirmed by our role in supporting operations Desert Shield and Storm. As to the economic benefits, we call to the Subcommittee's attention the statements made by Secretary Peña in response to questions raised by Senators Hollings and Lott during his confirmation proceedings:

"Q (Senator Hollings): All too often we have seen American companies move offshore to the detriment of our Nation's economy. Do you agree that the use of U.S.-flag ships results in a positive balance of payments, employs Americans at sea and in company headquarters, and otherwise boosts the U.S. economy?"

"A (Secretary Pena): Yes."

"Q (Senator Lott): Does the Clinton Administration believe that a U.S.-flag commercial fleet is vital to the economic as well as the military security of the nation? Will your Department of Transportation support legislation to revitalize the U.S.-flag fleet?"

"A (Secretary Pena): The answer to both questions is yes."

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'2/20/93, page A11.

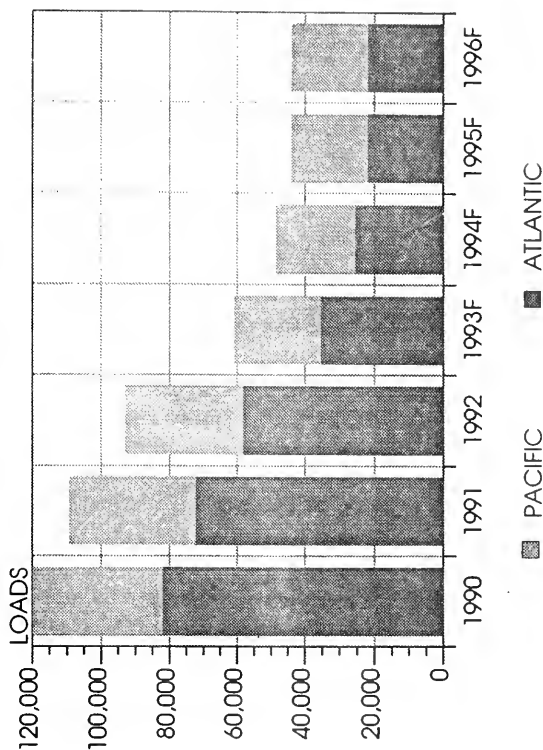
For all these reasons, we are looking forward to working with this Subcommittee and the Congress as a whole to finally achieve, this year, urgently needed major maritime reform legislation.

We very much appreciate the opportunity to appear before the Subcommittee and would be anxious to respond to questions.

Thank you.

# Market Trends

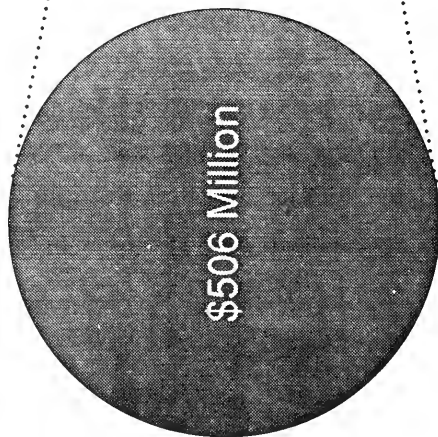
## Military Sustainment & Household Goods *CONUS Outbound*



Government Marketing  
February 17, 1993

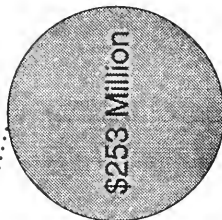
## DOD MILITARY DRY CARGO MARKET RESERVED FOR U.S.-FLAG VESSELS

1990



\$506 Million

1995 Forecast  
(Best Case)



\$253 Million

## MARITIME LOGISTICAL READINESS

## SEC. 101. SHORT TITLE.

This title may be cited as the "Maritime Logistical Readiness Act Of 1993"

## SEC. 102. PURPOSE AND POLICY.

- (a) Findings.--The Congress finds that it is in the interest of the national defense and economic security of the United States that there be a strong and economically viable privately-owned and operated U.S.-flag commercial merchant fleet as an essential part of America's transportation infrastructure, providing important trade benefits, including improving America's balance of trade, and the most cost-effective way of meeting defense sealift needs.
- (b) PURPOSES. The purposes of this title are to --
  - (1) clarify when Department of Defense cargoes transported by water are required to be transported on privately owned and operated United States-flag vessels;
  - (2) ensure that the Government-owned or controlled sealift force is not larger than is necessary to meet military missions that cannot be met by the privately-owned merchant fleet;
  - (3) foster and promote the development and maintenance of a financially healthy, privately owned and operated United States-flag fleet.

(c) POLICY.

The Department of Defense shall establish and administer rules, procedures, and practices for procurement of transportation and logistical services for Department of Defense cargoes which foster and promote the development and maintenance of a financially healthy United States-flag privately owned and operated merchant vessel fleet in accordance with the purposes and policy of this title.

SEC. 103. CONTINGENCY PLANNING IN CONSULTATION WITH OPERATORS OF PRIVATELY-OWNED UNITED STATES-FLAG VESSELS.

In order to make the fullest, practicable use of the transportation capacity and service of operators of privately owned United States-flag vessels and to avoid the acquisition of government owned vessels that would duplicate privately owned United States-flag shipping capacity, and to help ensure the viability of the United States-flag merchant marine, the Secretary of Defense shall, in all studies, reports, or actions concerning sealift and related logistical requirements, take into account the full range of capabilities available from operators of privately owned United States-flag vessels, and shall certify to the Secretary of Transportation, no less than annually, that an opportunity has been provided to each such operator to present to the Department of Defense information describing its capacities and infrastructure, both port to port and intermodal, and that each such operator has been provided an opportunity to participate in the development of such studies and reports.



SEC. 104. TRANSPORTATION BY WATER AND DISTRIBUTION OF DEPARTMENT OF DEFENSE CARGOES.

- (a) Section 2631 of title 10, United States Code, is amended in its entirety to read as follows:

"Sec. 2631. Transportation by Water and Distribution of Department of Defense Cargoes.

"(a) Definitions:

"(1) "Department of Defense cargoes" means any supplies, goods or other cargo owned, leased or provided to, for, or by the Armed Services of the United States and transported by water.

"(2) "Supplies" means all property, except land and interests in land, that is at the time of transportation, readily identifiable for eventual use by the Armed Services. It includes, without limitations whatsoever, public works, buildings and facilities, ships, floating equipment and vessels of every character, type and description, together with parts, subassemblies, accessories, and equipment, machine tools, material, and stores of all kinds, end items, construction materials, and the components of the foregoing.

"(3) "Goods" includes, without limitation whatsoever, property of Armed Services personnel and items intended for eventual sale within a commissary or exchange system.

"(4) "Other cargo" includes, without limitation whatsoever, any items, including humanitarian assistance, provided, arranged, donated, sold at less than market value, or funded or purchased on credit provided or guaranteed, or for which transportation charges are so funded, provided or guaranteed, by the Department of Defense, for any other department or agency of the United States or for any person or entity, including foreign governments and international organizations.

"(5) "Financial assistance", without limitations whatsoever, including any items wherever U.S. funds are provided for goods or services, will be subject to the cargo preference laws.

"(b) Except as otherwise provided in this section-

"(1) Department of Defense cargoes shall be transported on privately owned and operated United States-flag commercial merchant vessels whenever such vessels are available with reasonable timeliness.

"(2) Foreign-flag vessels may be utilized for the transportation of Department of Defense cargoes only when privately owned vessels described in paragraph (1) are not available with reasonable timeliness.

"(c) Procurement for transportation of Department of Defense cargoes by water or through intermodal service including transportation by water, shall be between an operator of privately owned United States-flag vessels and the United States Transportation Command as single manager under regulations made by the Secretary of Defense.

"(d) Notwithstanding any other provision of law, freight and other charges for services under contracts made pursuant to subsection (c) of this section shall be earned upon tender to and acceptance of the cargo by the contractor. If such amounts are not paid within (30) calendar days after submission of the contractor's invoice, a late payment charge at the rate then in effect for interest payments under the Contracts Disputes Act of 1978, title 41, United States Code, section 611 shall thereafter accrue.

"(e) Except in time of war or national emergency or as provided in paragraph (b) of this section 2631, vessels owned by the United States shall not be operated in competition with privately-owned United States-flag commercial merchant vessels.

"(f) (1) Within 60 days after enactment of the Act, the Secretary of Defense shall authorize and direct the Commander, United States Transportation Command to commence negotiations with operators of privately owned vessels for transportation of Department of Defense cargoes by water or through intermodal service including transportation by water for the purpose of arriving at mutually acceptable terms of logistics readiness agreements. Such agreements as shall be mutually acceptable will be entered into by parties agreeing to within 240 days after enactment of this Act.

"(2) Such agreements shall contain basic terms for providing transportation and logistics services to Department of Defense cargoes in times of war, national emergency, or overseas regional crises, plus provisions for future negotiation of additional terms and specific rates and charges to meet specific conditions of a war, national emergency or overseas regional crises, or other contingency operations.

"(g) In the event of conflict between any provision of this section and any provision of titles 10, 31, 40 or 41, United States Code, this section shall prevail.

(b) The table of sections at the beginning of chapter 157 of title 10, United States Code, is amended by striking the item relating to section 2631 and inserting the following:

"2631. Transportation by Water and Distribution of Department of Defense Cargoes."

SEC. 105. MODERNIZING OTHER PROGRAMS.

- (a) The Secretary of Defense and the Secretary of Transportation shall promptly take such actions as are appropriate to modernize, update, revise, or eliminate, the current Sealift Readiness Program in light of the changes in statute and policy effected by this Act.
- (b) No agency of the United States Government may require a person party to a logistics readiness agreement to enter into or remain enrolled in the Sealift Readiness Program or any similar program, either as a condition of a contract to provide services, or otherwise.

\*\*\*\*\*

U.S. GOVERNMENT-IMPELLED CARGO  
MERCHANT MARINE SUBCOMMITTEE U.S. HOUSE OF REPRESENTATIVES

SUPPLEMENTAL STATEMENT OF  
AFRAM LINES (USA) CO., INC.

FEBRUARY 24, 1993  
H.R. 57

Mr. Chairman, Afram Lines (USA) Co., Inc. agrees with the Joint Statement of the U.S.-flag Liner Carriers that "when U.S. taxpayer dollars are in the cargo hold of a ship, there must be a U.S.-flag and a U.S. crew on the ship." Afram also agrees with the "policy objective of maintaining a strong and economically viable privately owned and operated U.S.-flag commercial merchant fleet." However, within this framework, competition should be promoted to obtain the best value costs to the government. Competition should not be restricted by giving arbitrary priority to so-called common carrier "liner" vessels or by blindly requiring "intermodal contracts."

H.R. 57, § 4, gives priority to U.S.-flag vessels that are "(A) operating in United States liner or tramp trades, and (B) not chartered to the Government." Time charters and voyage charters are not accorded this priority. However, these charters generate needed revenues to U.S.-flag vessel owners and enhance the military's flexibility to meet specific transportation requirements.

The government should retain the flexibility to use time or voyage charters. If the military must move a full ship-

- 2 -

load of cargo, or multiple cargoes, it may be unable to obtain favorable terms if required to use a "liner" vessel instead of a time or voyage charter. A requirement for "liner" vessels may also limit the movement of cargo in an efficient and expeditious manner. For example, operations DESERT SHIELD and DESERT STORM were supported by time chartered vessels and could not have been accomplished with vessels operating in "liner" trades.

H.R. 57 unduly favors larger U.S.-flag carriers to the detriment of smaller companies. For example, Afram does not offer "liner" service to Korea. However, we can offer the military a voyage charter to Korea at very competitive rates. If smaller companies such as Afram are precluded from such competition, rates will invariably rise while smaller U.S.-flag operators are put out of business, defeating the national defense policy objectives of cargo preference.

The military should retain the flexibility to use time and voyage charters where such use promotes competition, reduces rates, allows the use of the most suitable vessels, and furthers the military's requirements. Similarly, while the government should use intermodal contracts where appropriate, the government should not be required to use intermodal networks where it is not necessary or where it is done to restrict competition to the larger companies with such networks already in place. Where the military can contract for the ocean transportation and an inland movement separately, accomplish its requirements, and save money, it should be allowed to do so.

- 3 -

Final legislation should clarify that the government can use all types of transportation on privately-owned U.S.-flag vessels, be it liner, tramp, time charter, voyage charter, port-to-port or intermodal. Competition should be promoted while allowing the military to retain the flexibility to make intelligent procurement decisions.

Afram asks this Subcommittee to ensure a level playing field is available for smaller companies. We appreciate the opportunity to appear before this Subcommittee and will be pleased to respond to any questions. Thank you.

BEFORE THE  
SUBCOMMITTEE ON MERCHANT MARINE  
COMMITTEE ON MERCHANT MARINE AND FISHERIES  
UNITED STATES HOUSE OF REPRESENTATIVES

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OVERSIGHT HEARING ON CARGO PREFERENCE LAWS  
AND H.R. 57, THE UNITED STATES MERCHANT MARINE  
UTILIZATION AND PREFERENCE ACT OF 1993

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STATEMENT OF  
ERIK F. JOHNSEN, PRESIDENT  
INTERNATIONAL SHIPHOLDING CORPORATION

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Mr. Chairman and members of the subcommittee, our companies, International Shipholding Corporation, Central Gulf Lines, Inc. and Waterman Steamship Corporation, appreciate the opportunity you have afforded to us to comment on (i) the compliance of various federal agencies with the current cargo preference laws and (ii) H.R. 57, the "United States Merchant Marine Utilization and Preference Act of 1993," a bill that purportedly seeks to clarify and enact requirements for transporting Department of Defense cargo in privately owned and operated U.S.-flag vessels.

In sum and substance, we urge this committee, the Congress and the new Administration to take whatever actions are necessary to maximize compliance with the cargo preference laws. However, we vigorously oppose H.R. 57, as well as the "Maritime Logistical Readiness Act of 1993" proposed by certain other carriers as a substitute for H.R. 57 when they appeared before this committee on February 24.



MAXIMUM COMPLIANCE WITH THE CARGO  
PREFERENCE LAWS IS ESSENTIAL TO THE  
U.S.-FLAG MERCHANT MARINE

As Chairman Studds stated at the hearing on February 24:

"Our preference laws are based on a clear and well-thought-out policy: When our Government ships cargo, or causes it to be shipped, via ocean transportation, a substantial portion of it should go on commercially-operated U.S.-flag vessels."

Cargo preference, of course, is vitally important to the U.S.-flag merchant marine. It guarantees the availability of cargo to U.S.-flag ships; it improves the financial viability of U.S.-flag operations; and it provides jobs for American seamen. In addition, it plays a critical role in the maintenance of a healthy, modern, manned U.S.-flag commercial fleet, fully equipped to meet our nation's needs in times of war or other national emergency. Thus, as Chairman Studds also stated at the hearing on February 24: "This is such a simple policy that it never ceases to amaze me when I hear various Government agencies say it is hard to understand — or maintain that it is inconvenient to comply with."

Sadly however, as hearings before this committee have demonstrated, some federal agencies, and some foreign governments which are heavily reliant on the United States for precious military and economic aid and assistance, simply fail or refuse to comply with these truly essential preference laws and regulations. In this regard, the Acting Maritime Administrator testified on February 24: "MARAD is extremely disappointed that the Government of Kuwait has avoided significant utilization of U.S. carriers in

the rebuilding of its country." And, in further testimony, the Acting Administrator stated that the Department of State is resisting MARAD's efforts to require Israel to maximize the use of U.S.-flag ships to transport goods purchased as a result of the \$10 billion loan guarantee recently approved for that country by Congress. And, of course, we are all familiar with the erosive inroads the so-called "cash-transfer" foreign aid program made on cargo preference. In the final analysis, that questionable foreign aid device has resulted in both the exportation of American jobs in the supply sector and exportation of Government-sponsored cargoes to foreign shipping competitors of U.S.-flag operators and American seamen.

The time has clearly arrived, therefore, when this committee, the Congress and the President should reemphasize and reinforce the necessity for maximum compliance with the letter, spirit and intent of the federal cargo preference laws. Each federal agency must be ordered fully to comply. Agencies, such as the Export-Import Bank which guarantee credits or loans involving ocean transportation, must be made to require that such transportation comply with the preference laws. Nations such as Kuwait and Israel, which depend heavily on the United States for military and/or economic assistance, must also be required to adhere to the cargo preference laws when this nation's assistance results in ocean transportation. Foreign aid devices such as "cash transfer" obviously must be eliminated or minimized, and if they are used at all, they must be

made subject to compliance with the cargo preference laws of this nation.

Finally, new foreign aid programs such as the one under consideration for Russia and the other former Soviet republics, must include cargo preference law compliance requirements.

Much can and should be accomplished by the President through issuance of a forceful Executive Order. Where necessary, additional clarifying legislation should be enacted by Congress. In the meantime, as new agency officials are confirmed by the Congress, they must be required to pledge their support for full compliance with the cargo preference laws.

ISC'S CHARTER OPERATIONS WITH  
THE MILITARY SEALIFT COMMAND

By way of background, International Shipholding Corporation (ISC), whose headquarters are located in New Orleans, Louisiana, is engaged through its subsidiaries in ocean and inland waterborne freight transportation throughout the world. ISC's fleet consists of 30 modern ocean vessels, 15 towboats, 111 hopper barges, 39 standard river barges and 1,700 LASH barges. One of our principal operating subsidiaries, Central Gulf Lines, Inc., currently charters six vessels to the MSC, including three LASH (Lighter Aboard Ship) vessels, two Ice-Strengthened Multi-Purpose vessels, and one Roll-On/Roll-Off vessel. Another of our companies, Waterman Steamship Corporation, charters one of its LASH vessels to the MSC and operates an additional three Military Pre-Positioned Ships for the MSC.

Central Gulf's LASH vessels under charter to the MSC comprise an integral part of the MSC's Afloat Prepositioned (PREPO) Ships program. Each LASH vessel carries between 83 and 89 LASH barges. The LASH vessels are self-loading and discharging. As part of the PREPO program, our MSC-chartered LASH vessels are based at Diego Garcia in the Indian Ocean. These vessels contain essential equipment, supplies and munitions for the Army and Air Force. One of the primary purposes of these MSC-chartered vessels is to deliver an initial load of supplies to Army and Air Force units that may be deployed in the Middle East or elsewhere until a continuous supply is made available through the host country or the establishment of a supply line of regular sealift ships from the United States.

The wisdom and necessity of the PREPO program were clearly demonstrated during Operation Desert Shield and Operation Desert Storm. As this subcommittee will recall, on August 2, 1990, Iraq invaded Kuwait. On August 9, ten of the twelve ships in the PREPO program, including Central Gulf's three LASH vessels based in Diego Garcia, were ordered to the Persian Gulf to support the United States military effort. Only one week later, on August 16, Central Gulf's LASH vessel, the M/V GREEN HARBOUR, arrived in Dammam, Saudi Arabia. Over the course of the Persian Gulf conflict, our PREPO vessels continued to supply the United States war effort in Saudi Arabia and Kuwait, making several port calls in the Persian Gulf during that time period.

Additionally, Waterman Steamship operates three MPS vessels

under long-term MSC charter. The MPS program consists of a total of 13 specialized cargo vessels organized into three separate squadrons. Each squadron contains the unit equipment and 30 days of supplies for a mechanized Marine Expeditionary Brigade (MEB) of about 16,500 Marines. The purpose of the MPS program is to provide the Marine Corps with the capability for rapid deployment of armed and supplied MEBs to a variety of potential "flashpoints" throughout the world. Under the MPS concept, Marines are flown to the region of operation, where they are "married up" with the equipment and supplies delivered by the MPS vessels. Because these vessels are forward-deployed and pre-loaded with Marine Corps equipment, they can typically reach destinations faster than vessels originating in the United States. Like the PREPO ships, the MPS ships were heavily involved in Desert Shield/Desert Storm. Waterman's three MPS vessels made several calls to the Persian Gulf area and provided the Marine Corps with vitally important supplies in the early days of the conflict. More recently, the MPS vessels have been employed as part of Operation Restore Hope in Somalia and have been alerted for possible duty in Yugoslavia.

The military operations in Iraq and Somalia have plainly demonstrated the effectiveness of the MSC's PREPO and MPS programs. The MSC's ability to charter privately owned U.S.-flag vessels for these and other purposes must be protected if this nation's vital defense needs are to be met. Any attempt by Congress to diminish or curtail the MSC's authority to charter U.S.-flag ships as and when the MSC deems it militarily necessary is, in our view,

extremely hazardous. Surely, if any such restriction had been imposed on the MSC prior to the Persian Gulf conflict, the United States war effort would have been severely undermined. This explains, in part, why we strenuously oppose H.R. 57 and the substitute bill proposed by other carriers on February 24.

H.R. 57 AND THE PROPOSED SUBSTITUTE ARE  
OBJECTIONABLE AND SHOULD NOT BE APPROVED  
BY THIS COMMITTEE

None of the industry witnesses who testified at the hearing on February 24 supported H.R. 57. The group which filed a joint statement offered a substitute bill, and Lykes Bros. Steamship Co. suggested that the Wilson-Weeks Agreement must be updated to reflect current operation and composition of the U.S.-flag merchant fleet before H.R. 57, or any substitute bill, can be fairly considered. As indicated above, ISC and its subsidiaries, Central Gulf and Waterman, also strenuously oppose both H.R. 57 and the proposed substitute.

Essentially, both H.R. 57 and the proposed substitute seek to amend 10 U.S.C. 2631, entitled "Supplies; preference to United States vessels", for the purpose of establishing a totally discriminatory priority system for the transportation of military cargoes. Under both bills, the Department of Defense (DoD) would be compelled by Congress to discriminate in favor of U.S.-flag liner and tramp vessels operated by carriers such as American President Lines (APL) and Sea-Land, and against U.S. flag vessels chartered to DoD by carriers such as Central Gulf and Waterman.

Clearly, there is no justification for baseless, destructive, government-mandated discrimination of that kind among competing U.S.-flag carriers. If we read the Military Sealift Command's publication, "1991 In Review", correctly, U.S.-flag liner operators such as APL and Sea-Land are already transporting a major portion of DoD's available dry cargo tonnages. Why then should Congress force DoD to grant these same carriers priority status over other U.S.-flag carriers for transportation of the remaining tonnages? And why should DoD's flexibility under 10 U.S.C. 2631 in the selection of available modes or types of transportation — a system which has worked so well in recent years — be changed by an Act of Congress simply to gratify the desires of these larger carriers for a greater share of the available cargoes than they are already transporting?

The remaining order of vessel priority mandated by both H.R. 57 and the proposed substitute is equally objectionable. H.R. 57 is vaguely drawn, but it seemingly relegates U.S.-flag vessels such as those chartered by Central Gulf and Waterman to MSC to the third ("nucleus fleet") category. The substitute bill, in turn, gives "foreign-flag vessels" second priority for DoD cargoes, and it fails to grant any priority whatsoever to chartered U.S.-flag vessels such as those MSC presently charters from Central Gulf and Waterman.

This self-serving, short-sighted approach ignores military reality and would seriously harm the military's ability to respond rapidly to military contingencies around the world. We note,

rather ironically, that H.R. 57's description (in Section 5(b)(1)(B)) of vessels eligible for the "nucleus fleet" does not include LASH vessels, even though the MSC currently charters four of our LASH vessels and consistently applauds the military utility of these ships.

We also strenuously object to H.R. 57's proposed limitation of the "nucleus fleet" to ten dry cargo vessels and 22 tanker vessels. This proposal does not properly reflect the number of vessels currently under charter to the MSC nor the number of vessels MSC reasonably needs to have under its control to carry out its military mission. The bill also requires the nucleus fleet to be reduced over time from this initial number of vessels, which we find equally unacceptable.

Finally, we find Section 7 of H.R. 57 to be objectionable because, as drafted, it could lead to the use of the Ready Reserve Force in peacetime. Such a result would necessarily limit the ability of privately-owned vessels to transport military cargo for the MSC under charter or otherwise.

THE PROPOSED SUBSTITUTE FOR H.R. 57  
THREATENS UNJUSTIFIABLY TO INTERFERE  
WITH THE INTERNAL MANAGEMENT AND  
OPERATION OF DOD.

We also oppose the proposed substitute for H.R. 57 because it attempts unjustifiably and improperly to interfere with the internal management and operation of DoD's transportation system, which is critical to the security of the United States. It would direct DoD how to manage its transportation procurement system, and



how it must contract for ocean transportation of military cargoes. It proposes to mandate the negotiation and execution of "logistics readiness agreements," and by so doing, it would require DoD to employ specified types of transportation service DoD might not otherwise procure. Plainly, DoD's transportation of vitally important military cargoes should not be subjected to such rigid requirements, and its ability to meet the nation's defense needs should not be hampered by such restrictive agreements.

#### CONCLUSION

1. This committee, the Congress and the President should reinforce and reinvigorate the cargo preference laws, and effectively eliminate all evasions of those statutory requirements.

2. The committee should not approve H.R. 57 or the substitute therefor offered for the committee's consideration during the hearing on February 24.



U.S. Department  
of Transportation

**Maritime  
Administration**

400 Seventh Street, S.W.  
Washington, D.C. 20590

29 MAR 1993

The Honorable William O. Lipinski  
Chairman, Subcommittee on Merchant Marine  
Committee on Merchant Marine and Fisheries  
1334 Longworth House Office Building  
Washington, D.C. 20515

Dear Mr. Chairman:

I am enclosing the Maritime Administration's answers to the questions you included with your letter of March 4, 1993, to complete the record of the Subcommittee's hearing on February 24, 1993.

Again, I regret not receiving your letter until March 23, and being unable to send our answers to you by March 18, as you requested.

If I can be of further assistance, please call at any time.

Sincerely,

RICHARD E. BOWMAN  
Acting Maritime Administrator

Enclosure

QUESTION 1:      WHAT ARE MARAD'S MAJOR COMPLIANCE PROBLEMS WITH OTHER AGENCIES?

ANSWER:

- a.    Wilson-Weeks violations - carriage of commercial cargoes by Department of Defense controlled vessels. For example, Ready Reserve Fleet vessels and U.S. government controlled vessels which are ostensibly on military exercises are also carrying cargo which should be reserved for commercial vessels.
- b.    Commonwealth of Independent States/General Sales Manager aid - exclusion of preference for concessionary cargoes. The U.S. Department of Agriculture has used "commercial credit" programs to provide agricultural assistance to the CIS. MARAD had protested that such aid was concessional as CIS was not credit-worthy. In fact, the CIS has defaulted on these loan guarantees, proving MARAD's position.
- c.    Exclusion of vessel types by U. S. Department of Agriculture & Agency of International Development (tug-barges and tankers). In a number of cases, USDA and AID have excluded tankers, tug barges, etc. when there was no compelling reason, such as need for speedy delivery for starving people. These decisions appear to be arbitrary in a number of cases.
- d.    Military household goods - inability to get data on total movements, alleged falsification of bills of lading and other shipping documents (currently under investigation by the Federal Maritime Commission). MARAD is working with Military Traffic Management Command to get better documentation on bills of lading. We are considering promulgation of a rule requiring DOD to provide data on all household goods shipments.
- e.    MARAD has other agency problems aside from compliance. Specifically, onerous non-commercial terms contained in charter parties and tenders for agricultural cargo preference. We are attempting to rectify this imbalance by a rulemaking for a uniform charter party which also mandates MARAD pre-approval of all tender terms. This document is currently at the Office of Management and Budget.

QUESTION 2:        HOW CAN CONGRESS HELP MARAD WITH ITS OVERSIGHT  
                         RESPONSIBILITIES?

ANSWER:

Congress can exert its authority over the agencies through regular communications, hearings or through specific legislation when compliance problems come to your attention. MARAD regularly reports to Congress on compliance and through that process, Congress is able to carry out its oversight responsibilities.

QUESTION 3:      WHY WOULD THE DEPARTMENT OF DEFENSE (DOD) EVER  
                      CHOOSE TO USE FOREIGN FLAG VESSELS FOR THE CARRIAGE  
                      OF MILITARY CARGOES?

ANSWER:

DOD may elect legitimately to use foreign-flag vessels based on:

- o      non-availability of U.S.-flag vessels
- o      delivery schedule cannot be met by U.S.-flag vessels
- o      cost for U.S.-flag vessels has been determined to be  
          excessive or unreasonable

QUESTION 4a: BETWEEN 1981-1989, ISRAEL SIGNED SIDE LETTERS WITH THE UNITED STATES TO BUY GRAIN AND SHIP 50% OF IT ON U.S. SHIPS. WHAT HAS BEEN DONE IN THE LAST THREE YEARS?

ANSWER:

In October 1989, for FY 1990, the Government of Israel (GOI) refused to renew the side letter agreement. They did however voluntarily use U.S.-flag vessels between FY 1990 and 1991. The total amount of bulk grain shipped on U.S.-flag vessels during this time period, amounted to 955,000 tons, significantly less on an annual basis than U.S. carriers had received under the side letter agreement.

In December 1991, the GOI reinstated the side letter for FY 1992, after receiving letters from MARAD criticizing the termination of the side letter and seeking a new agreement. During this time period 800,000 tons of bulk grain were transported on U.S.-flag vessels to Israel, as provided in the agreement.

Again in December 1992, for FY 1993, the (GOI) provided AID, a side letter after MARAD again expressed itself on the non-renewal of the 1991 side letter, to transport 800,000 tons of grain on U.S.-flag vessels. The GOI subsequently provided an agreement and fixed 800,000 tons of bulk grain from the U.S. to Israel on U.S.-flag vessels. To date, some 650,000 tons have been fixed on consecutive voyages through April/May 1993, at which time the remaining tonnage will be fixed.

QUESTION 4b: HOW MUCH U.S. MONEY, DIRECT OR VIA A LOAN GUARANTEE, HAVE WE GIVEN TO ISRAEL IN THE LAST FEW YEARS?

ANSWER:

For FY 1990, 1992 and 1993, Israel received through the Economic Support Fund \$1.2 billion each year. For FY 1991 they received \$1.8 billion. Through loan guarantees, Israel received in FY 1990, \$400 million under AID's Housing Guarantee program and in FY 1993, an additional \$10 billion in loan guarantees was appropriated over a 5 year period of \$2 billion for each year. In addition, Israel receives approximately \$1.8 billion in military assistance each year under the Foreign Military Finance program.

QUESTION 4c:      REGARDING ISRAEL'S LOAN GUARANTEE PROGRAM, HAVE  
YOU HAD ANY MORE COMMUNICATIONS WITH THE  
DEPARTMENT OF STATE OR ANYONE ELSE?

ANSWER:

Prior to the Cargo Preference Hearing, Part II, on February 24, 1993, MARAD corresponded and met with officials of AID and State. Our attempt to have the cargo preference requirement included in the language of the loan agreement had proved unsuccessful. Prior to this hearing we also sent a letter dated February 18, 1993, to the Minister of Economic Affairs. (Copy attached.)

Following the hearing, the GOI called in response to this letter and an initial meeting was held in an attempt to develop an agreement concerning the carriage on U.S.-flag ships of cargoes generated by the \$10 billion dollars. A letter laying out the discussion was subsequently sent in response to Israeli questions and ideas. (Copy attached.)



US Department  
of Transportation

Maritime  
Administration

Administrator

400 Seventh Street, S.W.  
Washington, D.C. 20590

18 FEB 1993

Honorable Amnon Neubach  
Minister of Economic Affairs  
Embassy of Israel  
3514 International Drive, NW  
Washington, DC 20008

Dear Mr. Minister:

Recently the Government of Israel (GOI) concluded an agreement with the United States regarding \$10 billion in loan guarantees concerning the resettlement of refugees emigrating to Israel. Accompanying that agreement was a document entitled "Overview of the Israel Loan Guarantee Program" (Overview Paper), that is of interest to the U.S. merchant marine.

As you know, Congress advocates the utilization of U.S.-flag tonnage whenever possible. The Overview Paper provides that the GOI will use its best efforts to substantially increase its purchases of U.S. goods and services. It further notes that business leads will be provided by a forum, led by the GOI and the U.S. Department of Commerce. Since the costs for the U.S.-flag liner vessel services are the same as the Israeli flag liner vessel services between the United States and Israel, our national flag vessels should participate substantially in the anticipated increase in commerce.

We have been asked to testify before the Subcommittee on Merchant Marine on February 24, 1993, concerning the opportunities available to U.S.-flag carriers under the \$10 billion guarantee program. We believe it would be mutually beneficial to craft an agreement in the spirit of the existing cash transfer side letter which would benefit both the U.S. and Israeli merchant marine.

In order to clarify the steps that would be taken to implement the agreement, I suggest that we meet as soon as possible. We will contact your office shortly to set up a mutually agreeable time.

Sincerely,

*Ed. Richard E. Bowman*

RICHARD E. BOWMAN  
Acting Maritime Administrator





US Department  
of Transportation  
Maritime  
Administration

Administrator

400 Seventh Street, S.W.  
Washington, D.C. 20590

26 MAR 1993

The Honorable Amnon Neubach  
Minister (Economic Affairs)  
Embassy of Israel  
3514 International Dr., N.W.  
Washington, D.C. 20008

Dear Mr. Neubach:

Thank you for the time you took to visit with Mr. Gerace and I to discuss ways in which the United States maritime industry may participate in and benefit from the expenditure by the Israeli private sector of the \$10 billion in loan guarantees provided by the U.S. Government.

I appreciate some of your ideas and believe that this first meeting was clearly a good starting point.

Your offer to provide me with current statistics and future projections of "Goods" expected to move to and from the United States and Israel over the next year and beyond would be most helpful. The same information or ideas on how that information could be made available for "Services" would also be helpful. To the extent that you have the names of U.S. manufacturers that will be receiving contracts as a result of this assistance and the names of the importers in Israel that would also be useful information.

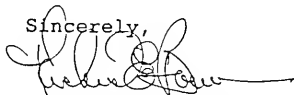
The idea of trade missions both in the United States and Israel is excellent but, as we discussed, the end result for both of us is some type of agreement that when goods and services are purchased in the United States with financing provided by the United States, U.S.-flag carriers will share in the transportation of the freight.

I look forward to resuming our discussions as we pursue the appropriate mechanism to assure U.S.-flag carriers the opportunity to participate in the carriage of cargoes generated by the \$10 billion in loan guarantees. It would be beneficial for us to maintain the momentum we started today.

I will be calling Dick Morningstar at the Department of Commerce to request MARAD's involvement in the initiatives being undertaken by them as part of the loan commitments to encourage trade between our two countries. Thanks for your suggestion in that regard. As a final note, what would you think about

inviting the U.S. carriers to a meeting with you to explain the process and how they in working with us (you and I) can participate in these shipments?

Sincerely,

A handwritten signature in dark ink, appearing to read 'Richard E. Bowman', with a long horizontal flourish extending to the right.

RICHARD E. BOWMAN  
Acting Maritime Administrator

cc:CGerace:sd:3-26-93.  
100 110 800 400 860

QUESTION 5: PLEASE EXPLAIN AGAIN TO ME THE REQUEST BY KUWAIT FOR EXPORT-IMPORT BANK LOANS. AND, SECONDLY, DOESN'T PUBLIC RESOLUTION 17 REQUIRE 100% CARGO PREFERENCE WITH EXPORT-IMPORT BANK LOANS?

ANSWER:

The Government of Kuwait applied to the Export-Import Bank for a \$2 billion Line of Credit under a Framework Agreement to cover purchases of items required for the repair and reconstruction of the civil infrastructure of Kuwait.

Public Resolution 17 (P.R. 17) requires certain cargoes generated by the EXIMBANK to be shipped on U.S.-flag vessels. MARAD may grant general waivers permitting up to 50 percent of the cargo generated by an individual loan to be shipped on vessels flying the flag of the recipient nation and does so if it is determined that U.S.-flag shipping is being accorded fair and equitable treatment in the trade with the recipient nation.

QUESTION 6:      WHY IS THE EXPORT-IMPORT BANK WRITING LOANS TO  
NARROW CARGO PREFERENCE LAWS?

ANSWER:

Attorney General opinions (copy of Eximbank letter dated March 7, 1983, discussing opinions is attached) interpret the applicability of P.R. 17 as not being mandatory but rather applying only where it is feasible to do so.

The EXIMBANK has maintained over the years that it would not be feasible to apply P.R. 17 to the medium-term guarantee programs since it involves excessively large numbers of small transactions. This same rationale is applied to the bundling arrangements consisting of numerous medium-term guarantees.

EXIMBANK maintains that applying P.R. 17 to these transactions would damage the exporting efforts of small businesses within the United States, and, in addition, place an onerous administrative responsibility on EXIMBANK staff.

However, based upon the "Blended Credit" decision, MARAD is pursuing the applicability of P.L. 664 to these programs rather than PR 17. The Blended Credit decision determined that the cargo Preference Act covers the advance of either funds of credits or guarantees foreign currency conversion, that "...it was passed by Congress with the expressed desire that it apply to 'programs financed in any way by Federal funds'...", that it was not limited to foreign aid cargoes by included procurement utilizing"... governmental guarantees and advances of funds or credits." P.L. 664 provides that a minimum of 50 percent of federally sponsored or generated cargoes must be carried on U.S.-flag vessel and is intended to cover all federal programs not covered by the other preference laws. If successful, an additional \$2.5 billion of U.S. exports will be subject to the U.S. Government's cargo preference laws. (Letter from Eximbank responding to MARAD on this issue is attached.)



EXPORT-IMPORT BANK OF THE UNITED STATES  
WASHINGTON, D.C. 20571

March 22, 1993

BOARD OF DIRECTORS

CABLE ADDRESS: EXIMBANK  
TELEX: WU 89-461  
RCA 248460

Mr. Richard E. Bowman  
Acting Maritime Administrator  
Maritime Administration  
U.S. Department of Transportation  
400 Seventh Street, S.W.  
Washington, D.C. 20590


Dear Mr. Bowman:

I am responding to your letter dated March 10, 1993, to Mr. Kenneth Brody, President-designate of the Export-Import Bank of the United States ("Eximbank"), since his appointment has not yet been confirmed by the United States Senate.

You attached to that letter a memorandum prepared by the Acting Chief Counsel of the Maritime Administration. That memorandum, like the earlier letter to Eximbank dated October 2, 1992, from former Maritime Administrator Warren Leback, again revisits the issue of whether Eximbank's programs are subject to the Cargo Preference Act of 1954, 46 U.S.C. §1241(b), and Public Resolution Number 17 of the 73rd Congress.

Both the earlier letter from Captain Leback and the recent memorandum prepared by your Acting Chief Counsel have been carefully reviewed by the Office of the General Counsel of Eximbank. We have reaffirmed our conclusions that the Cargo Preference Act of 1954 has no application to Eximbank programs, and that Public Resolution No. 17 is a non-binding expression of Congressional sentiment that by its terms applies only to loans. These positions are based upon a close reading of the relevant statutory language and legislative history, and were fully outlined in a letter dated January 15, 1993, from Stephen G. Glazer, Acting General Counsel of Eximbank, to Captain Leback. As you are aware, these positions have been consistently maintained by Eximbank since the enactment of the Cargo Preference Act of 1954, and, in regard to Public Resolution No. 17, throughout the history of the Bank.

Sincerely,

  
Rita M. Rodriguez  
Director



## EXPORT-IMPORT BANK OF THE UNITED STATES

WASHINGTON, D.C. 20571

OFFICE OF THE  
GENERAL COUNSELCABLE ADDRESS "EXIMBANK"  
TELEX 88-81

March 7, 1983

Mr. H.E. Shear  
Maritime Administrator  
U.S. Department  
of Transportation  
400 Seventh Street, S.W.  
Washington, D.C. 20590

Re: Applicability of P.R. 17 to Eximbank Programs

Dear Mr. Shear:

In your letter of December 30, 1982, you raise questions as to the applicability of P.R. 17 to Eximbank's exporter credit guarantee and insurance programs. We welcome the opportunity to restate our view that the resolution does not apply to these programs. Our position is based both on a reading of the language of P.R. 17 as well as other pertinent materials. Congress has also implicitly acknowledged our position. Furthermore, the non-applicability of P.R. 17 to the Bank's exporter credit guarantee and insurance programs has been explicitly confirmed by both the Maritime Administration and the National Advisory Council on International Monetary and Financial Policies (NAC).

While changes have been made in P.R. 17 since it was first passed in 1934, there have been no modifications to the language which gives rise to your concerns. The resolution has now been codified and appears as §1241-1 of Title 46 of the U.S. Code. It reads as follows:

It is the sense of Congress that in any loans made by any instrumentality of the Government to foster the exporting of agricultural or other products, provision shall be made that such products shall be carried exclusively in vessels of the United States, unless, as to any or all of such products, the Secretary of Transportation, after investigation, shall certify to the instrumentality of the Government that vessels of the United States are not available in sufficient numbers, or in sufficient tonnage capacity, or on necessary sailing schedule, or at reasonable rates. (Emphasis added)

ACTION

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In interpreting this provision, a statement of the Attorney General in his 1934 opinion construing the original P.R. 17 should be kept in mind: "Words are presumed to be used in their ordinary and commonly-accepted sense unless that sense is repelled by the context."

The only type of financing mentioned by the resolution is "loans." Webster's Third New International Dictionary defines a "loan" as "money lent at interest." The appropriate meaning of "lent" or "lend", as also defined by Webster's Third New International Dictionary, is "to let out (money) for temporary use on condition that it be repaid with interest at an agreed time." In addition, Black's Law Dictionary, Fifth Edition, defines a "loan" as:

A lending. Delivery by one party to and receipt by another party of sum of money upon agreement, express or implied, to repay it with or without interest.

There is no question that Congress knew the difference between loans and other types of financing. Evidence in support of this point can be found in an examination of Eximbank's own enabling statute, the Export-Import Bank Act of 1945, as amended. Thus, for example, §7(a) of that Act states that "The Export-Import Bank of the United States shall not have outstanding at any one time loans, guarantees, and insurance in an aggregate amount in excess of \$40,000,000,000." This language is clearly intended to encompass all of Eximbank's programs.

In contrast, §2(b)(3) requires notification to Congress of any Eximbank "loan or financial guarantee or combination thereof." This language excludes all of the exporter credit guarantee and insurance programs. Under §2(c)(1) Eximbank is allowed to charge on a fractional basis only "the related contractual liability which the Bank incurs for guarantees, insurance, coinsurance, and reinsurance against political and credit risks of loss." This language excludes the direct lending program.

Perhaps, the most careful distinction is drawn by Congress in §2(b)(2) where Eximbank cannot provide support under any of its programs for exports to any Communist country, unless the President determines that it is in the national interest for the Bank to do so. Individual Presidential national determinations are also required under that section, but only for transactions "in which the Bank would extend a loan to such Communist...country...in an amount of \$50,000,000 or more." (Emphasis Added) This language excludes financial guarantees and all of the exporter credit guarantee and insurance programs.

- 3 -

You cite the "preamble" of the resolution as evidence that Congress meant to include all kinds of financing when it used the term "loans." The preliminary language you are referring to is part of the title, not a preamble. A preamble "consists of recitals and statements which come before the validating or enacting clause in a statute, usually giving reasons for the operative provisions which follow." Sutherland, Statutory Construction, Fourth Edition, §47.04. As a title, the language "may not be used as a means of creating an ambiguity when the body of the act itself is clear." *Id.*, §47.03. "The title cannot control the plain words of the statute." *Id.* As mentioned above, P.R. 17 is unambiguous, and consequently, there is no need to refer to the title.

In any case, the language of the title provides no support for the interpretation you suggest. That language was further shortened by Congress when P.R. 17 was codified and became §1241-1 of Title 46 of the U.S. Code. It reads as follows: "Shipment of exports financed by Government in United States vessels." Whether in the title to the resolution or to the U.S. Code provision, it seems clear that Congress was trying to describe the subject matter in as few words as possible. The term "finances" was simply intended to be an abbreviation for "makes loans to finance." Support for this position is to be found in the notes to the section as set forth in the United States Code Annotated. For example, the purpose of the provision is stated as follows: "Congress intended by this section to lay down a rule of guidance to be followed by the administrative agencies of the Government engaged in making loans to finance the exporting of agricultural and other products." (Emphasis Added) Similar language appears in the other explanatory notes to the provision.

Because the provision is clear on its face, under long accepted principles of statutory construction, there is usually no need to refer to extrinsic aids. See §48.01, Sutherland, Statutory Construction, Fourth Edition. Nevertheless, we have carefully examined the two opinions of the Attorney General which you cite and cannot find support for the position you have taken. While you point out correctly that the first opinion did not discuss the scope of coverage of P.R. 17, your attention is also drawn to the fact that the Attorney General scrupulously referred only to "loans" throughout the opinion. Thus, for example, in the headnotes the subject of the opinion is summarized as follows:

By Joint Resolution No. 17...Congress intended to lay down a rule of guidance to be followed by the administrative agencies of the Government engaged in making loans to finance the exporting of agricultural and other products.



- 4 -

Such agencies are not required by said resolution, however, to provide in all loans that such products shall be carried exclusively in vessels of the United States...(Emphasis added)

Within the actual body of the opinion, the same terminology is employed by the Attorney General:

...it is my opinion that the Congress intended by the Resolution to lay down a rule of guidance to be followed by the administrative agencies of the Government engaged in making loans to finance the exporting of agricultural and other products. Such agencies are not required by the Resolution, however, to provide in all loans that such products shall be carried exclusively in vessels of the United States, but only if it is feasible to do so..." (Emphasis added)

With regard to the second opinion, a close reading of the text provides the correct explanation for the insertion of the footnote which you cite in your letter. The Attorney General had used the phrase "government-financed exports" in a sentence that formed part of the discussion of whether or not P.R. 17 was intended to be a statement of opinion or a command -- "Had Congress wanted to impose a mandatory requirement that government-financed exports be shipped exclusively in American ships, it could readily have done so by adopting a statute in the usual form." An adjective was obviously needed to characterize the exports that were subject to the resolution. "Government loaned" exports would have made no sense, and the technically correct phrase "exports financed by government loans" would have made an already lengthy sentence too long. It was precisely to avoid any possible ambiguity or implication arising from the use of the phrase "government-financed export" that the Attorney General added in a footnote, "No question has been presented to me as to what kinds of financing arrangements constitute 'loans' within the meaning of Public Resolution 17, and I accordingly express no opinion on that question."

More than ten years ago, Congress demonstrated its recognition that the term "loans" did not include all types of financing. In 1971, Edward A. Garmatz, then Chairman of the House Committee on Merchant Marine and Fisheries, introduced H.R. 10694, bill to amend P.R. 17 to include "other credit arrangements or guarantees, whether for public or private account." Such language would have been unnecessary if the term "loans" were to have been given the broader meaning you suggest. In a letter to Mr. Garmatz, Henry Kearns, then Chairman of Eximbank opposed the proposed legislation and noted that it "would extend the requirements of Public Resolution No. 17 of the

- 5 -

73rd Congress to include not only the Bank's loan programs but also its guarantee and insurance programs." It should be noted that the proposed amendment did not even pass the House. Copies of the bill and Mr. Kearn's letter are enclosed.

I have also enclosed copies of documents from both the U.S. Maritime Administration and the NAC in which they state that P.R. 17 does not apply to Eximbank's guarantee or insurance programs. Early in 1960 Eximbank introduced its bank guarantee program. On March 11, 1960, the Bank requested the Maritime Administration to confirm Eximbank's position regarding the inapplicability of the resolution to this program. In a reply dated March 23, 1960, Walter C. Ford, Acting Maritime Administrator, wrote:

In the light of your description of the guaranty program as contemplated, the Maritime Administration concurs in the Bank's proposal to omit any reference to the requirements of Public Resolution 17 in its guaranty agreements. Such a plan is not considered to be contrary to the Maritime Administration's Statement of Policy dated July 25, 1959 on Public Resolution 17.

On October 10, 1961, Jack N. Behrman, Deputy Assistant Secretary of International Affairs, Department of Commerce, notified Eximbank of a decision by the NAC regarding "the application of the preferential shipping requirement to the export credit guarantees." He stated:

This question was raised at a NAC Staff Committee meeting in late September, and we have taken it up within our own council. Our decision on the matter is as follows:

Cargo movements resulting from the new expanded export credit guarantee program should remain exempt from preferential shipping requirements as long as they are purely under insurance arrangements which require EX-IM Bank financing only in the event of default under the insured risks. No objection is contemplated therefore on non-applicability of PR-73-17 to export credit guarantees so long as direct financing or participation in financing by the Bank is not involved.

The Department of Commerce is a member of the NAC, and at that time the Maritime Administration belonged to the Department of Commerce. Thus, the NAC spoke not only for the Department of Commerce, but for the Maritime Administration as well.

Finally, I would like to note that even if P.R. 17 were held to apply to Eximbank's exporter credit guarantee and

- 6 -

insurance programs, the Bank would not necessarily be required to observe its provisions. The 1934 opinion of the Attorney General which was subsequently confirmed by the 1965 opinion of the Attorney General makes clear that the resolution is not mandatory and applies only if it is feasible to do so. It would not be feasible to apply P.R. 17 to the exporter credit guarantee and insurance programs, since they involve large numbers of small transactions which must be handled expeditiously if the exports supported under them are to go forward. Most of the processing, in fact, is carried out by the banks and exporters who use the programs, and in some instances they are even delegated the authority to commit Eximbank without its prior approval. For a fuller discussion of this point, I refer you to the enclosed letter of Mr. Kearns.

The Attorney General concluded his 1965 opinion by stating:

Even if the question were more doubtful as an original matter, I would nevertheless adhere to the opinion rendered by Attorney General Cummings. That opinion has been outstanding for over thirty years, and the waiver policy developed in reliance on it has had a significant impact on world-wide shipping practices. The consistent practice of the Attorneys General has been not to reexamine questions definitively answered by their predecessors, at least unless exceptional circumstances are present or it is demonstrated that the earlier ruling was clearly erroneous. In addition, the interpretation of Public Resolution 17 as not imposing a mandatory requirement has in effect been ratified by Congress.

I believe the same situation exists with regard to the applicability of P.R. 17 to Eximbank's exporter credit guarantee and insurance programs. Eximbank has consistently maintained that P.R. 17 applies only to loans extended by the Bank<sup>1</sup>, and that position was confirmed by the Maritime Administration and the NAC more than twenty years ago. Moreover, Congress clearly

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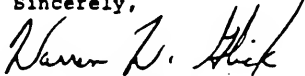
<sup>1</sup>Eximbank voluntarily applies P.R. 17 to financial guarantees only as a matter of policy, since they are usually extended together with direct loans to which the resolution does apply. Moreover, it has been feasible to do so even in transactions involving financial guarantees alone. Thus, observance of the provisions of P.R. 17 in these transactions should in no way be interpreted as precedent for applying them to the exporter credit guarantee and insurance programs.

- 7 -

demonstrated its awareness and acceptance of the limited scope of the resolution.

Eximbank has had a long and successful collaboration with the Maritime Administration regarding the programs to which P.R. 17 does apply, and we look forward to continuing to work with you as closely in the future.

Sincerely,

A handwritten signature in dark ink, appearing to read "Warren W. Glick", with a stylized flourish at the end.

Warren W. Glick  
General Counsel

Enclosures

P.R. 17

PRESIDENT  
AND  
CHAIRMANEXPORT-IMPORT BANK OF THE UNITED STATES  
WASHINGTON, D.C. 20571

NOV 12 1971

CABLE ADDRESS "EXIMBANK"  
TELEX 88-81

Dear Mr. Garmatz:

This is in reply to your letter of September 17, 1971, with which you enclosed a copy of the bill, H.R. 10694, introduced by you and referred to your Committee for consideration. This bill, if enacted into law, would amend the joint resolution expressing the sense of the Congress with respect to the shipping in United States vessels of products purchased with loans from the United States in order to apply the provisions of such joint resolution to other types of credit assistance.

With respect to the Bank's operations, the proposed legislation would extend the requirements of Public Resolution No. 17 of the 73d Congress to include not only the Bank's loan programs but also its guarantee and insurance programs. This proposed legislation would require carriage of U. S. exports exclusively in vessels of U. S. registry except and to the extent that the United States Maritime Administration grants a waiver of such requirement.

The operations of the Bank can generally be classified in the following two categories:

- 1) direct loans, and
- 2) guarantees and insurance.

Direct Loans. The Bank has required strict observance of the preferential shipping provisions of P.R. 17, as amended, by borrowers in whose favor direct loans have been established, whether these are long term loans or short term loans.

Normally, when the Bank makes a direct loan the transaction is of a fairly substantial size and the repayment terms extend beyond five years. However, even in cases where the

- 2 -

Bank finances large sales of agricultural products through direct loans of a relatively short term, the Bank has applied the provisions of P.R. 17. In these transactions the Bank has direct negotiations with the foreign purchaser and is in privity with it, thereby placing the Bank in a position to require inclusion of the preferential shipping provisions in its agreement with the foreign purchaser.

Guarantees and Insurance. Under its guarantee and insurance programs the Bank handles several thousand applications each year. Most of these transactions are small and medium sized sales with repayment terms from six months to five years. These programs are processed primarily through the commercial banks in the United States and the Foreign Credit Insurance Association. The sales covered under such programs cover a total range of goods, commodities, and services and represent the normal commercial relationships between U. S. sellers and foreign purchasers. The terms and conditions of each transaction under these programs including the terms of repayment and interest rates are negotiated directly between the seller and the purchaser. The banking institutions and the Foreign Credit Insurance Association by issuing guarantees and insurance are accommodating United States exporters in their day-to-day commercial transactions. In most cases the banks and Foreign Credit Insurance Association do not have any direct relationship or any privity with the foreign purchaser.

If legislation were enacted imposing a requirement of shipment on vessels of U. S. registry, it would destroy the non-government aspect of these transactions. It would also place an additional burden on U. S. sellers in their efforts to sell U. S. goods in the international marketplace. This would have the most drastic effect on the small businesses in the United States who are exporting their goods and services, because those businesses are not in any position to require a foreign purchaser to ship on U. S. vessels. To insist on such a requirement would in many cases cause the foreign purchaser to buy the same goods and services from a third country thereby eliminating any carriage requirement and also eliminating any carriage whatsoever on vessels of U. S. registry.

- 3 -

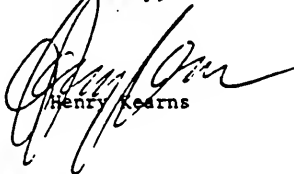
Clearly such a requirement would damage the exporting efforts of the small businesses within the United States.

In addition, it would be administratively impossible for the Export-Import Bank or the United States Maritime Administration to assure compliance with these preferential shipping requirements because of the several thousand applications and transactions which are concluded each year.

The Export-Import Bank of the United States opposes enactment of the proposed legislation. We are confident that your Committee will examine H.R. 10694 in light of the adverse effect its enactment would have on the overall export trade of the United States and the adverse effect it would have on employment in the United States in both the large and small industries manufacturing goods for export.

The Bank has been advised by the Office of Management and Budget that there is no objection to the submission to you of this report from the standpoint of the Administration's program.

Sincerely,



Henry Kearns

The Honorable  
Edward A. Garmatz  
Chairman, Committee on Merchant  
Marine and Fisheries  
U. S. House of Representatives  
Washington, D. C. 20515

QUESTION 7:      HOW MANY OTHER NATIONS HAVE CARGO PREFERENCE LAWS?  
WHAT IS THEIR PERCENTAGE REQUIREMENT?

ANSWER:

Based on preliminary data, among the countries we have surveyed the number which report having some kind of cargo preference law is 36. We cannot give an overall percentage, but the following are examples of other countries' cargo preference schemes:

Venezuela's cargo preference law reserves in principle 50 percent of all export and import cargoes to national-flag carriers. While this is not fully enforced in practice, the scope of cargo subject to reservation is nonetheless very broad, covering all government-impelled cargo, including shipments by quasi-governmental companies and those financed with government assistance.

France has two cargo reservation laws, one requiring that two-thirds of the country's crude oil needs be carried in French-flag vessels, the other reserving 40 percent of coal imports to French-flag vessels.

Spain's cargo preference law requires that 100 percent of tobacco, grain and grain products, coffee, cotton, and 90 percent of petroleum and bituminous materials (and 75 percent of their derivatives) imported into Spain be carried in Spanish-flag vessels when and where available. (The EC has required that Spain allow access to its trades for all EC-flag vessels.)



QUESTION 8: WHAT CAN MARAD DO IN 1993 TO BECOME MORE EFFECTIVE WHEN THE STATE DEPARTMENT NEGOTIATES WITH ANOTHER COUNTRY FOR AN AGREEMENT INVOLVING U.S. AID, SUCH AS THE ISRAEL LOAN GUARANTEE?

ANSWER:

A review of MARAD's actions concerning the \$10 billion loan guarantee to Israel shows that MARAD made every possible effort to get AID and State Department to acknowledge and recognize the application of the cargo preference to the guarantee. Since the first mention of Israeli "absorption guarantees" over two years ago, MARAD has continuously monitored and tracked the progress of the loan guarantee. For nearly four months MARAD was unable to obtain from AID and State the status of the legislation and the identity of the responsible U.S. Government entity for administering the \$10 billion loan guarantee. On December 3, 1992, MARAD wrote Assistant Secretary of State Edward Djerejian requesting assistance in ensuring that cargo preference language be included in the guarantee.

Assistant Secretary Djerejian responded January 6, 1993, stating that "There is no specific reference in the legislation to cargo issues, nor is this legislation directly comparable to that which established the housing loan guarantees in 1991."

MARAD then wrote to the Minister of Economic Affairs Amnon Neubach, Government of Israel, concerning the intent of the "Overview of the Israel Loan Guarantee Program" that accompanied the AID guarantee agreement. In the overview paper, there were certain mechanics for distributing business leads to the U.S. business community as a result of the \$10 billion in loans. MARAD requested a meeting with Minister Neubach for the purpose of signing an agreement to benefit both the U.S. and Israeli merchant marine.

A meeting with Minister Neubach and Acting Maritime Administrator Richard Bowman was held on March 23, 1993, to discuss opportunities for the U.S.-flag carriers.

MARAD believes it did everything possible to support U.S.-flag carriers in the Israeli case. We will continue to be pro-active in future similar circumstances.

Secretary Peña has indicated his interest in participating in areas in which there is conflict between a Department of Transportation agency and another agency outside the Department. We will keep him advised as these situations develop.

QUESTION 9: IS IT TOO LATE TO MODIFY THE ISRAEL LOAN AGREEMENT?

ANSWER:

The State Department developed an "Overview of the Israel Loan Guarantee Program" with the Government of Israel (GOI), dated November 30, 1992. The actual loan guarantee was concluded between the Agency for International Development and the GOI as of January 5, 1993. It appears it is too late to modify the agreement.

As mentioned previously, MARAD's Acting Maritime Administrator Richard Bowman met with GOI Minister Neubach on March 23, 1993, to discuss the possibility of a "side letter". We are continuing that dialogue in order to assure that U.S.-flag carriers receive a fair share of any transportation generated by the agreement.

QUESTION 10: DO YOU THINK THE MILITARY SEALIFT COMMAND (MSC) HAS A CONFLICTING MANDATE TO SHIP AS INEXPENSIVELY AS POSSIBLE AND TO USE U.S. PRIVATE CARRIERS? AND SECONDLY, WHICH MANDATE IS THE MOST IMPORTANT TO THE UNITED STATES?

ANSWER:

Yes. As one of the major U.S. shippers, MSC is charged with obtaining the best possible rates for the ocean transportation of Department of Defense cargoes. This responsibility does conflict with their responsibility to ensure a healthy, viable U.S. Merchant Marine industry to support our national security interest in trouble spots where military deployments are required. The purpose of the preference laws has always been to ensure a healthy merchant marine. However, due to budgetary constraints within the Department of Defense MSC is in a difficult position in trying to accomplish both objectives.

QUESTION 11: HOW EXACTLY DOES MARAD PROCEDURALLY EXPRESS ITS VIEWS WITH OTHER AGENCIES-DO THE CABINET SECRETARIES GET INVOLVED? WHO RESOLVES THE DIFFERENCES OF OPINIONS REGARDING CARGO PREFERENCE COMPLIANCE AND INTERPRETATION?

ANSWER:

This can be done at all levels. We have daily (sometimes hourly) discussions with shipper agencies at the working level. Commonly, the Maritime Administrator will write to or meet with his/her counterpart to discuss contentious issues. Less frequently, the Secretary will become personally involved (as Secretary Skinner did on the agricultural aid to Community of Independent States).

There have been instances where the White House/OMB has intervened, such as in the 95/5 rule, which dramatically changed payment requirements and thus provided the U.S. vessel owner with much greater protection against risk. The vessel owner can now receive letter of credit protection prior to vessel load, can claim detention if an acceptable letter of credit is not in place and receives 95% of his ocean freight upon arrival at the discharge port. The final 5% is paid upon resolution of outstanding claims. Prior to this rule, the owner received 90% of the freight within approximately 30-60 days after arrival at the discharge port.

Despite these procedures, resolution is sometimes difficult. Depending on the type of issue involved, The White House, Office of Management and Budget, Comptroller General or the General Accounting Office could be involved.

QUESTION 12: IS MARAD DOING ANYTHING ABOUT ALL OF THE TERMS AND CONDITIONS THAT ARE BEING FORCED ONTO THE SHIP?

ANSWER:

MARAD tried to work with the shipper agencies to attain more commercial terms but was not successful. As a result, we have decided to exercise our regulatory authority under Section 901(b)(2) of the Merchant Marine Act of 1936. We have submitted a Notice of Proposed Rulemaking to the Office of Management and Budget which consists of a uniform charter party and MARAD preapproval of tender terms for both liner and tramper voyages. This regulation would eliminate the rampant discriminatory terms which are currently directed to all U.S. flag vessel owners.

Some of these discriminatory terms are:

Fumigation costs are for the account of the vessel owner. Commercially the owner is not responsible for these charges, the charterer is responsible. This could increase the freight rate by \$1-3/MT.

Payment is upon arrival at the discharge port rather than the traditional payment upon sailing load port. This means the vessel owner must finance up to 60 days of the voyage before payment. This adds \$1-2/MT to the freight rate.

HELEN DELICH BENTLEY  
2ND DISTRICT, MARYLAND

COMMITTEE ON  
THE BUDGET

COMMITTEE ON  
PUBLIC WORKS AND  
TRANSPORTATION

COMMITTEE ON  
MERCHANT MARINE  
AND FISHERIES

SELECT COMMITTEE ON AGING

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-2002**

CAUCUSES  
STEEL  
ART  
TRADE AND TOURISM  
MARITIME  
HUMAN RIGHTS  
ENERGY TASK FORCE

March 18, 1992

Captain Warren G. Leback  
Administrator  
U.S. Maritime Administration  
Department of Transportation  
400 Seventh Street, S.W.  
Washington, D.C. 20590

Dear Captain Leback:

I have your letter dated March 3, 1992, regarding the issues that I surfaced in my letter to you of February 6, 1992.

After reviewing the material you provided regarding the concerns that the industry and I have with respect to MARAD's activities in the cargo preference area, I now am fully convinced that an investigative hearing by the Committee on Merchant Marine and Fisheries into MARAD's philosophy and performance with the preference statutes is absolutely necessary, and as soon as possible.

During the last year, I have been approached by U.S. flag bulk vessel owners, tankers owners, liner carriers and union interests about MARAD's handling of the cargo preference function. Now, your letter has confirmed precisely what I had been told by these entities. MARAD, on its own, without pressure from the agency sponsoring the programs, has determined that preference does not apply to programs that it previously had captured and reported to the Congress under cargo preference. MARAD now also views the governing agreements executed between it and the sponsoring agency as "voluntary" and is "monitoring" their activity.

This unprecedented initiative by MARAD has resulted in the loss by U.S. flag liner operators of several hundred vehicles, just in the last couple of months. These cargoes would have been transported by them had MARAD not determined, on its own, that these programs were no longer subject to the cargo preference laws. I find this initiative by MARAD to be irresponsible, unconscionable and inconsistent with the stated objective of the Merchant Marine Act of 1936 that MARAD was created to uphold. (For your guidance, MARAD's "monitoring" of these "voluntary" agreements did not enable the U.S. flag carriers to secure these cargoes. Any benefit derived from "monitoring voluntary" agreements does not compare to all the benefits received by the U.S. flag carriers that are derived from enforcement of the application of the cargo preference laws.)

PLEASE REPLY TO:

WASHINGTON OFFICE  
1810 LONGWORTH BUILDING  
WASHINGTON, DC 20515-2002  
TELEPHONE (202) 225-3081  
FAX: (202) 225-4251

DISTRICT OFFICE  
200 EAST JOPPA ROAD  
TOWSON, MD 21204  
TELEPHONE (410) 337-7222  
FAX: (410) 337-0021

DISTRICT OFFICE  
7458 GERMAN HILL ROAD  
DUNDALK, MD 21222  
TELEPHONE (410) 285-2747

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OPY

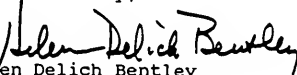
BUY U.S. A I SAVE AMERICAN JOBS

Captain Warren Leback.  
Page 2

Finally, my concerns that MARAD lacks specific expertise in the analysis aspect of the cargo preference laws' application to Federal programs also were confirmed. However I will, not discuss in detail, at this time, this matter and the other area of shortfall by MARAD in the preference enforcement function. It is necessary that I present this and other material at the hearing which I am requesting to ensure that an objective and full assessment of these actions is reviewed by the Committee.

Thank you for your offer to meet and discuss these and other matters raised in my letter to you. Unfortunately, I do not believe such a meeting can reverse the serious problems that the industry and I now know exist. Therefore, I must decline the offer to meet with you.

Sincerely,

  
Helen Delich Bentley  
Member of Congress

CC: Chairman, Committee on Merchant Marine and Fisheries  
Chairman, Senate Committee on Transportation and Commerce

U.S. Department  
of Transportation  
Maritime  
Administration

Administrator

400 Seventh Street, S.W.  
Washington, D.C. 20590

03 MAR 1992  
MAR 6 1992

The Honorable Helen Delich Bentley  
House of Representatives  
Washington, D.C. 20515-2002

Dear Mrs. Bentley:

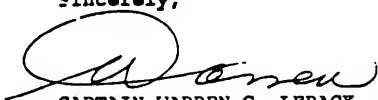
I appreciate your waiting for me to return from the Far East to respond to your letter of February 6, 1992. The accompanying enclosures will address your concerns issue-by-issue. As requested, also enclosed are the letters exchanged by the Maritime Administration (MARAD) and the Defense Security Assistance Agency in 1990 concerning the "Reduction of Conventional Forces Equipment Agreements."

At the outset, let me assure you that my staff and I are committed to fulfilling MARAD's statutory obligations imposed by Sections 901(b)(2) and 212 of the Merchant Marine Act of 1936, and are dedicated to a strong U.S. merchant marine. During the Persian Gulf crisis, U.S.-flag service was stretched to its limits. Despite this, the staff of the Office of National Cargo and Compliance were able to enforce the cargo preference laws and keep foreign-flag waivers to a minimum.

No significant changes in the enforcement of the cargo preference laws have been undertaken by my staff. MARAD remains committed to an aggressive enforcement of the cargo preference laws, well based on what we can do, given the current state of the law. We recognize the contribution that Government cargoes subject to those laws make to the financial viability of U.S.-flag operators.

I recognize that, as a member of the Committee on Merchant Marine and Fisheries, you had to express the depth of your concerns. If you wish to discuss these issues personally, I am available at your convenience.

Sincerely,

  
CAPTAIN WARREN G. LEBACK  
Maritime Administrator

Enclosures



**ISSUE:**

MARAD's perspective on how it determines whether programs are subject to cargo preference in relation to "standard, generic language" in the authorizing legislation.

**RESPONSE:**

o With regard to the "generic" provisions you referenced, MARAD's Chief Counsel has advised that recent compelling court decisions have determined that the phrase "notwithstanding any other law," means just that - no other law, including cargo preference, applies where that phrase appears in a statute. (See Crowley Caribbean Transport, Inc. v. United States, 865 F.2d 1281 (D.C. Cir. 1989)); Liberty Maritime Corp v. United States, 25 SRR 1395 (D.C. Cir. 1991)).

o Counsel does not view the "notwithstanding any other provision of law" language that is contained in Section 516 and Section 519 of the Foreign Assistance Act, 22 U.S.C. 2321j, 2321k, as being "generic" in nature and advised that, following the Crowley case, cargo preference requirements do not apply (Southern Region Amendment is Section 516).

o DSAA voluntarily established a policy requiring transportation of Sections 516 and 519 cargoes in U.S.-flag vessels.

o U.S.-flag carriers, because of DSAA's policy, have, to date, received over \$13M in ocean freight revenue for Sections 516 (SRA) and 519 cargo transfers.

o On the other hand, Drawdowns of Defense Equipment, or Section 506(a), FAA, Special Authority cargoes, fall under the 1904 Military Cargo Preference Act, and thus require 100 percent U.S.-flag carriage.

**CONCLUSIONS:**

Cargo preference does not apply to those programs containing the statement "notwithstanding any other provision of law." MARAD is monitoring those programs where a U.S.-flag shipping policy has been established by actively interfacing with DSAA, other DOD agencies, U.S.-flag carriers and foreign government representatives and freight forwarders.

*MARAD's paper.*



U.S. Department  
of Transportation  
Maritime  
Administration

Administrator

400 Seventh Street, S.W.  
Washington, D.C. 20590

09 APR 1992

The Honorable Helen Delich Bentley  
House of Representatives  
Washington, D. C. 20515-2002

Dear Mrs. Bentley:

This is in response to your letter of March 18, 1992, regarding the Maritime Administration's (MARAD) enforcement of cargo preference. I am disappointed that you believe a meeting between us would be unproductive. The cargo preference program is continually undergoing unwarranted attacks from its opponents and I had hoped that a meeting between us would go a long way toward avoiding further public debate over this unjustifiably maligned program.

I would be most happy to respond if you could identify the specific enforcement problem alluded to in your letter.

You also indicated at the March 19 hearing that you have letters from shipper agencies detailing lack of enforcement of preference by MARAD and that you would provide them to me so I could respond. To date these letters have not yet been made available and I'm anxious to provide you my assessment of these comments.

I appreciate and share your concern about the "notwithstanding" clause. As noted in the enclosures to our letter of March 3, 1992, very recent court decisions have forced our legal staff to conclude that the phrase "notwithstanding any other provision of law" precludes the applicability of cargo preference. We will uphold the cargo preference laws vigorously, but MARAD cannot fabricate coverage when the courts have determined non-applicability.

Similarly MARAD, on its own, cannot change the language that appears in the various cargo preference statutes. Congress would have to act to eliminate from established and pending foreign assistance legislation any language that would exclude cargo preference.

- 2 -

For many years both you and I have been staunch supporters and allies of the U.S.-flag industry. MARAD is committed to preserving the U.S. merchant marine on a healthy and sound basis. We need to unite our efforts in supporting the industry.

Sincerely,

A handwritten signature in dark ink, appearing to read "Warren G. Leback". The signature is fluid and cursive, with a large initial "W" and a stylized "L".

CAPTAIN WARREN G. LEBACK  
Maritime Administrator

cc: Chairman, Committee on Merchant Marine and Fisheries  
Chairman, Senate Committee on Transportation and Commerce

HELEN DELICH BENTLEY  
- 20 DISTRICT, MARYLAND

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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-2002**

February 17, 1993

COMMITTEE ON  
THE BUDGET  
COMMITTEE ON  
PUBLIC WORKS AND  
TRANSPORTATION  
COMMITTEE ON  
MERCHANT MARINE  
AND FISHERIES  
SELECT COMMITTEE ON AGING  
CAUCUSES  
STEEL  
ART  
TRADE AND TOURISM  
MARITIME  
ENERGY TASK FORCE

The Honorable Warren Christopher  
Secretary of State  
U.S. Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520

Dear Mr. Christopher:

I am writing to enlist your support in correcting a previous policy of granting \$10 billion of loan guarantees to the Government of Israel (GOI) for refugee settlement without any commitment on the part of Israel to purchase U.S. goods and services.

I understand that the GOI and the Agency for International Development executed an agreement implementing the loan guarantee program on January 5, 1993. Nowhere in the agreement which rushed through in the final days of the last Administration, is there any commitment on the part of Israel to purchase U.S. goods and services with at least the funds expended outside of Israel.

To allow Israel to take our funds and purchase pre-fabricated housing or components in other nations or to allow Israel to send virtually none of these shipments on U.S.-flag vessels will strike the citizens of my district and many others as an outrage -- particularly when both housing and shipping have been especially hard hit in recent years. After hearing of your admirable pledge made at your confirmation hearing to have a Department where there is, in fact, an "American Desk" on every issue, I trust you feel the same way.

Judging, however, from the letter I received from Mr. Robert A. Brandtke, Acting Assistant Secretary of State for Legislative Affairs, dated January 19, 1993, a change from previous policy is already in order. The Acting Assistant Secretary was responding to my letter dated January 11, 1993 in which I expressed my concern that the Bush Administration was implementing the guarantee program through an executive agreement without buy and ship American commitments, which I believe is contrary to the spirit if not the letter of the law. The Acting Assistant Secretary glibly replied that "neither the Congressional Legislation nor the implementing agreement specifies cargo preference provisions."

BUY AMERICAN! SAVE AMERICAN JOBS!  
(RECYCLED PAPER)

The Honorable Warren Christopher

page 2

The Acting Assistant Secretary forgets that the cargo reservation laws of the United States apply to U.S. Government assistance programs without any need for a specific reference. The opposite of what the Acting Assistant Secretary implies is, in fact, true. The reservation laws generally apply to foreign assistance programs unless there is a specific exclusion. No such exclusion exists in the authorizing legislation.

Even less excusable is the statement in the Acting Assistant Secretary's letter that the GOI has "committed" to providing economic benefits to U.S. businesses flowing from the guarantees. A cursory review of the implementing agreement reveals that the GOI has "committed" to forums, exhibitions, appraisals and timely information -- and that is all.

Sadly, the Acting Assistant Secretary's letter is another example of a certain callousness in the Department with respect to U.S. economic interests. Too often in the past the Department has been more interested in helping foreign governments than ensuring that U.S. economic interests are advanced.

Under your new leadership I am hopeful that this destructive and outmoded attitude will change. Indeed, I believe it must if our foreign assistance programs are to retain the kind of political support that tough times in our economy will require.

I have attached a more detailed background paper on this issue. I would suggest, as a solution, that the Department negotiate and execute a "side agreement", "side letter" or some other document with the GOI ensuring that the U.S. economy, among others, will benefit and that the U.S.-flag carriers will transport at least 50%, if they are available, of such cargoes. In addition, there should be established an infrastructure in the "side agreement/letter" whereby the U.S.-flag carriers are provided with information as to the U.S. manufacturers that obtain contracts as a result of this assistance, as discussed in the aforementioned "OVERVIEW" document.

I would appreciate your views on this matter and look forward to hearing from you on this request.

Sincerely,



Helen Delich Bentley  
Member of Congress

Enclosure

cc: Members of Congress

**U.S. Economic Assistance to Israel  
Cash Transfers and Loan Guarantees**

It is significant to note that the beginning of the U.S. Government's "non-tied" foreign economic assistance initiatives, or as they are now known as "Cash Transfers", developed in the program for Israel in 1978. Israel was the largest recipient of our "Commodity Import Program" (CIP) under the Agency for International Development (AID). The CIP of AID required the recipient to spend these funds for U.S. manufactured goods and services. As a result, U.S. manufacturers and U.S. shipping companies -- and the U.S. taxpayer -- directly benefited from providing the foreign assistance. The trades where the CIP operated reflected a positive U.S. balance. The CIP was, and where it still is employed, good for everyone, recipient and donor as well.

With respect to Israel, because of the size of the CIP, in excess of one billion dollars, it was having difficulty in spending the money within the legislated time frame, as all purchases were required to be reviewed and approved by AID before the funds could be released. In 1977, officials of AID, STATE and the Government of Israel met to devise ways to streamline the approval process. It was in these meetings that the "Cash Transfer" concept was proposed. Essentially, Israel would not be confined to purchasing in the United States, or using U.S. flag vessels with the funds that it would receive. This would enable Israel to spend all of the foreign assistance funds within the time frame, as well as provide the U.S. Government with the ability to eliminate several staff positions in AID that were involved with the documentation and approval process of the CIP. (A review of the AID internal documentation of 1978 will reveal that it eliminated approximately 20 positions as a result of changing the Israeli assistance program from CIP to Cash Transfer.)

Unfortunately, for the American worker, the Cash Transfer concept has resulted in the loss of hundreds of thousands of American jobs -- far beyond those within the bureaucratic confines of AID. It should be noted that if the instant \$10 billion loan guarantee assistance were required to be spent on U.S. goods and services, it would create at a minimum more than 225,000 U.S. taxpayer jobs. However, this benefit to the U.S. economy did not sway senior State Department or Bush Administration officials. To add insult to injury to the American taxpayer, such jobs that are lost in our industries are then created overseas with U.S. taxpayers' funds, as has been demonstrated in GAO reports. These reports also reflect the change from a positive U.S. balance of trade in such trades to a trade deficit, when U.S. Government has removed the "buy American" restriction from the foreign assistance funds.

Long before a vote was taken by the Congress on the \$10 billion loan guarantee assistance, several members of Congress petitioned the Bush Administration to secure its assurance that appropriate

U.S. procurement and shipping provisions would be specified in the agreement transferring these funds. Almost simultaneous with the development of the \$10 billion assistance package by the Bush Administration was the scheduling of an Oversight Hearing by the Chairman of the House Committee on Merchant Marine and Fisheries. The Committee for more than a year had been receiving consistent complaints from the U.S.-flag shipping community and U.S. manufacturers that several Federal agencies were evading compliance with U.S. procurement and cargo preference statutes.

Congresswoman Bentley had provided the State Department with sufficient time to respond to her letter, which was sent to Mr. Eagleburger on August 24, 1992. This was before the terms of the assistance package were finalized, before the Congressional vote was taken on its passage, and long before the Committee conducted its hearing which occurred on September 30, 1992. The State Department had also been requested to provide a witness to testify at the hearing about this assistance package.

Mr. Eagleburger chose not to provide a specific response to the issues that Congresswoman Bentley raised, nor did he provide an Administration witness to testify at the hearing.

Before the Bush Administration left office, Congresswoman Bentley once again, on January 11, 1993, surfaced this matter with the Mr. Eagleburger.

A reply was provided on January 19, 1993, from the Acting Assistant Secretary of State. This response is of enormous concern to many members of Congress, as the Transfer of Funds Agreement that was provided with the response does not contain any binding requirements regarding the U.S. procurement and shipping issues.

It is now very clear that the precedent set by this first Transfer of Funds Agreement for the initial \$2 billion of U.S. loan guarantees, has shackled the Clinton Administration from being able to change the subsequent agreements that will transfer the remaining \$8 billion in U.S. loan guarantees.

There also was a particularly objectionable statement contained in the Acting Assistant Secretary's letter which has come to the attention of members of Congress. The statement was that because the Congressional legislation did not specify or contain the U.S.-flag cargo preference provisions, therefore, Congressional leadership did not intend them to apply. Congresswoman Bentley has attempted to ascertain to whom the Acting Assistant Secretary is referring to in the Congress, as many members were trying to determine what the Administration was actually going to do in this regard long before the legislative package reached the floor of the Congress for the final vote. There is no statement at all in the Senate report on this legislation or the Congressional Record that

has any reference to an exemption of the U.S. procurement and cargo preference statutes for this assistance package.

Not only is the Acting Assistant Secretary's statement and conclusion about the Congress's intention regarding cargo preference totally incorrect, it reflects the lack of understanding as to the relationship of P.L. 664 to foreign assistance initiatives of the U.S. Government. The legislative history of P.L. 664, 46, U.S.C. 1241(b), contains specific notation to the fact that this statute was enacted to provide permanent legislative application of cargo preference to foreign assistance initiatives. Therefore, it is not necessary (nor do such references to this statute appear in foreign assistance legislation) for this law to be referenced in such initiatives as a prerequisite to P.L. 664's application.

The Acting Assistant Secretary further stated that the implementing agreement also does not specify a cargo preference provision. However, this is not the fault of the Congress or P.L. 664, but a purposeful act by the Department's senior staff to ensure that U.S. flag shipping statutes would not be applicable to the agreement.

In 1984, the U.S. District Court ruled that P.L. 664 did not apply to U.S. Israeli Cash Transfers which were unaccompanied by any requirement for documentation and reimbursement. In this regard, the Department's senior staff carefully crafted the implementing loan guarantee agreement's language to mimic in the critical areas, the initial Israeli Cash Transfer agreements of the 1978-1983 era which were the subject of the Court's ruling. By all appearances, this was accomplished so as to ensure that there would not be any application to this assistance of the U.S. shipping statutes. Therefore, while P.L. 664 unquestionably applies to the empowering loan guarantee assistance legislation, it is inoperable as to the actual transactions that emanate from it because of the transfer of funds' agreement's terms. Once again, the intent of the Congress and P.L. 664 has been thwarted by the Department.

Even in view of the unfortunate record of events just reviewed, there still is an opportunity for both the U.S. Government and the Government of Israel to meet the real intent of the Congress regarding utilization of U.S.-flag vessels for purchases that emanate through the providing of this assistance package to Israel. In this regard, reference is made to the provisions of both the November 30, 1992 "OVERVIEW OF THE ISRAEL LOAN GUARANTEE PROGRAM" and its "Appendix I." There are numerous areas covered by this "document" (which we note has not even been signed by the Government of Israel) which might lead a casual observer to believe that there will be serious attempts to increase purchases of U.S. products and services as a result of this assistance package. However, a close examination of the specific "commitments" by the Government of Israel reveals little substance at all.



One might also expect that since the U.S.-flag liner carriers charge identical ocean freight rates as the Israeli national line, that the U.S.-flag carriers would derive a significant benefit from the shipping of these increased purchases. However, the record sadly reflects that unless there is a special agreement on this matter, U.S.-flag carriers may receive only a token portion of such shipments.

In this connection, it is important to note that prior to 1975, the Government of Israel did not utilize U.S.-flag vessels to transport U.S. financed Foreign Military Sales (FMS) cargoes to Israel, even though U.S.-flag vessels' rates were identical to the Israeli flag vessels' rates. It was only through the efforts of the U.S. Maritime Administration in 1975 which resulted in a revision of the FMS credit agreements to require mandatory use of U.S.-flag vessels, and its subsequent aggressive enforcement of these provisions, that finally resulted in the 50% participation of the U.S.-flag carriers in the U.S. financed military assistance cargoes to Israel.

Execution of an agreement or "side letter" between the Governments of the U.S. and Israel ensuring that U.S. flag vessels will transport at least 50% of the shipments moving from the U.S. to Israel that occur as a result of the \$10 billion of loan guarantees, would provide the easiest method of complying with both the intent of the Congress and the U.S. cargo preference statutes. There is ample precedent for this agreement, as with the initial Israeli Cash Transfer of 1978, a "side letter" was provided by the Government of Israel that committed to its use of U.S.-flag bulk carriers for the carriage of grain cargoes that would continue to move under this assistance.

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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-2002**

February 2, 1993

COMMITTEE ON  
THE BUDGET  
COMMITTEE ON  
PUBLIC WORKS AND  
TRANSPORTATION  
COMMITTEE ON  
MERCHANT MARINE  
AND FISHERIES  
SELECT COMMITTEE ON AGING  
CAUCUSES  
STEEL  
ART  
TRADE AND TOURISM  
MARITIME  
ENERGY TASK FORCE

The Honorable Warren Christopher  
Secretary of State  
U.S. Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520

Dear Mr. Christopher:

I am writing to you about a matter that I originally brought to the attention of the State Department on January 11, 1993, involving the discrimination by the Government of Kuwait (Resolution No. 47/86) against the U.S. flag steamship companies serving Kuwait.

On January 19, 1993, I received a response, copy enclosed, from Mr. Robert A. Brandtke, Acting Assistant Secretary for Legislative Affairs. The efforts of the State Department, as reflected in this document, have been unsuccessful in removing this discrimination. It is not enough that the U.S. Maritime Administration, as was pointed out in this response, has denied Kuwait's request for a retroactive shipping waiver for an Export-Import Bank financed project. To accede to its request for a waiver would have been to add insult to injury. The fact is that the preponderance of the commerce moving from the U.S. to Kuwait is not even embraced by the Bank's financing, and, therefore, this action will have little effect in changing the Kuwaiti Government's position on the discrimination.

Kuwait should not be permitted to continue its discrimination against the U.S. flag companies. These U.S. flag carriers are the very companies that provided the life line of support to Kuwait and our troops both during Operations Desert Shield and Storm. This support is continuing today as we have once again committed our troops to defend Kuwait from Iraq's aggression.

Kuwait's allowing the United Arab Shipping Company the right of first refusal for Kuwaiti Government-sponsored cargoes can only be termed insensitive at least. I'm also certain that it would not be appreciated by our citizens if it were clear that the very nation our troops are defending was discriminating against American companies and American workers.

BUY AMERICAN! SAVE AMERICAN JOBS!  
(RECYCLED PAPER)

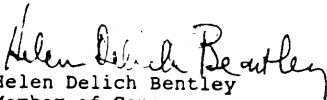
The Honorable Warren Christopher

page 2

In view of the foregoing, I request that the United States Government redouble its pressure on the Government of Kuwait to remove the discriminatory aspect of Resolution No. 47/86. Failure by the Government of Kuwait to do so would, to put it mildly, send the wrong signal to the Congress and the American people at a time when significant domestic sacrifices are in order and when we have numerous and equally serious foreign policy claims upon our nation's attention and its resources.

Since the discrimination against U.S. flag carriers continues to be a severe hardship for these companies, I would greatly appreciate it if you would provide me with the results of your efforts to remove this discrimination by February 15, 1993.

Sincerely,



Helen Delich Bentley  
Member of Congress

Enclosure

cc: Members of Congress  
U.S. Maritime Administration

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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-2002**

February 4, 1993

COMMITTEE ON  
THE BUDGET  
COMMITTEE ON  
PUBLIC WORKS AND  
TRANSPORTATION  
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MERCHANT MARINE  
AND FISHERIES  
SELECT COMMITTEE ON AGING  
CANCER  
STEEL  
ART  
TRADE AND TOURISM  
MARITIME  
ENERGY TASK FORCE

Mr. Richard Bowman  
Acting Administrator  
U.S. Maritime Administration  
400 Seventh Street, S.W.  
Washington, D.C. 20590

Dear Mr. Bowman:

I am writing to you to convey my deep concern about the Maritime Administration's (MARAD) oversight responsibility for ensuring that Federal agencies achieve compliance with P.L. 664, and that the U.S. flag carriers secure the opportunities provided by this statute to transport the U.S. Government sponsored cargoes subject thereto.

For almost one year, I have received numerous complaints that MARAD's Office of National Cargo has not been aggressively pursuing the enforcement of P.L. 664 and is not supportive of the industry when viable cargo preference issues surface that require attention. A case in point involves the imposition by the Agency for International Development's (AID) Transportation Division of a "Loading Delay Assessment" (LDA) penalty in several P.L. 480, Title II liner cargo tenders. In this connection, I am enclosing my February 3, 1993 letter to Mr. Scott Spangler, Acting Administrator for AID detailing my concerns about the LDA.

When members of the U.S. flag liner industry initially surfaced the LDA issue with me, they had not approached the National Cargo office for assistance. I asked that they do so. More than one U.S. flag liner company talked with the Director of that Office explaining their concerns. They were informed that MARAD was powerless to require AID to remove this penalty. I would like to point out that as occurred in this situation, generally, each time a liner operator's representative surfaces issues such as these with the Director, they are subjected to typically what amounts to a lecture about the Director's previous commercial activities at OMI. Unfortunately, this issue and many others that have been brought to the Director's attention are liner issues and OMI's experience and perspective generally do not relate to the liner carriers' problems or experiences.

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(RECYCLED PAPER)

Mr. Richard Bowmar

page 2

The LDA matter is not a new issue for MARAD. Three years ago, AID's Transportation Division attempted to impose a similar "loading delay" penalty by requiring U.S. flag liners to post "performance bonds" guaranteeing that they would meet an estimated loading date within criteria set by AID's Transportation Division. The Division of National Cargo successfully secured AID's removal of the performance bond requirement. There is no reason why the new Office of National Cargo could not have responded in a similar fashion and secured AID's removal of the LDA.

I now understand that AID's Transportation Division has determined, for the Balkans P.L. 480 cargo I reference in my February 3, 1993 letter to Mr. Spangler, that since the U.S. flag carrier would not agree to the LDA tender provision, that this constitutes "non-availability" under P.L. 664. AID's Transportation Division has, therefore, authorized this cargo to be transported by foreign flag vessels.

This is wrong. It is not AID or any shipper agency subject to P.L. 664 that sets the criteria for "non-availability" under the statute; it is MARAD. That is the law! Examination of MARAD's files will reflect that numerous letters have been sent to shipper agencies, including AID, since 1971, after MARAD was vested with oversight authority for P.L. 664, where it specifically stated this. Why has MARAD dramatically changed its enforcement perspective in the last 12 months?

I am also attaching for your guidance, a copy of my September 15, 1992 letter to Mr. Ronald W. Roskens, AID Administrator, wherein I detailed many of the problems that the Committee, the industry and I have with AID's Transportation Division's activities. The matters specified in this letter should have been attended to by the National Cargo Office, as MARAD had been fully aware of these issues for many months.

If the current LDA situation was an isolated case where the National Cargo office has not responded to the industry's concerns, I would not be sending this letter. However, the handling of the LDA matter by MARAD's Office of National Cargo illustrates only part of the concern that the industry, other members of Congress and myself have about what can only be termed as a "laid back" approach to the exercise of the oversight cargo preference responsibility by MARAD. It is clear that the shipper agencies, not MARAD, are determining how P.L. 664 is to be administered. In this regard, MARAD is not meeting the requirement set forth in section 901(b)(2) of the Merchant Marine Act of 1936 (Act). MARAD is to perform this function. I again remind you that MARAD's authority for determining how agencies achieve compliance with P.L. 664 was dramatically demonstrated in the celebrated case before The United States Court of Appeals, City of Milwaukee, et al. v. Clayton K. Yeutter, Secretary of Agriculture decided June 8, 1989.

Mr. Richard Bowman

page 3

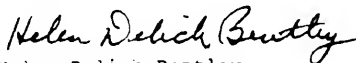
This court case was instituted because the port of Milwaukee disagreed with the directive of MARAD's Chief, Division of National Cargo, which required the U.S. Department of Agriculture (USDA) to move P.L. 480, Title II cargoes from the port of Milwaukee, where no U.S. flag service existed at the time, to Atlantic and Gulf ports where U.S. flag services were available. This decision was necessary in order for USDA to achieve the required U.S. flag participation in its program. MARAD determined that USDA's criteria for "non-availability" of U.S. flag service was not appropriate under the Act. The Court of Appeals upheld MARAD's decision and authority on such matters.

Our concern that MARAD properly exercise its cargo preference responsibilities is dramatized because of the critical part preference cargoes have in providing essential revenues for the U.S. merchant marine. These revenues and the industry are jeopardized when the agency responsible for ensuring compliance with the governing statute fails to perform the function it is required to perform by law.

In view of the foregoing, I request that MARAD 1) inform AID and other agencies, as MARAD has done in the past, that MARAD, not the agencies sets the criteria for determining "non-availability" under P.L. 664, 2) send a letter to AID instructing that AID must not impose a LDA on liner shipments and 3) provide me with a detailed response as to why the Director, Office of National Cargo did not properly assist the liner carriers that approached MARAD about the LDA penalty provision.

If MARAD does not dramatically improve its oversight enforcement responsibilities empowered by section 901(b)(2) of the Act, I intend to ask the Chairman of the Subcommittee on Merchant Marine to require MARAD to account for this activity in the pending Oversight Hearing on February 24, 1993. Since this hearing is only three weeks away, I request that you provide me with MARAD's response to the aforementioned matters, and to the issues that were discussed in my September 15, 1992 letter to Dr. Roskens (copy enclosed). I require your letter response before February 18, 1993, so that I may discuss it with the Chairman of the Subcommittee.

Sincerely



Helen Delich Bentley  
Member of Congress

Enclosures

cc: Chairman, Committee on Merchant Marine and Fisheries



U.S. Department  
of Transportation

Maritime  
Administration

Administrator

400 Seventh Street, S.W.  
Washington, D.C. 20590

1 8 FEB 1993

The Honorable Helen Delich Bentley  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congresswoman Bentley:

I am writing to you in response to your letter dated February 4, 1993, concerning the Agency for International Development's (AID) imposition of loading delay assessments (LDA) on emergency cargoes shipped under PL 480 Title II of the Agricultural Trade Development and Assistance Act of 1954 (1954 Act).

You raise several issues concerning loading delay assessments by AID. Does AID have the right to declare "non-availability"? Are the requirements for compliance by vessel type as mandated by Section 901(b)(2) of the Merchant Marine Act of 1936 (1936 Act) being met? Does the Maritime Administration (MARAD) have regulatory control over AID tender terms pertaining to "emergency" movements?

On the issue of "non-availability" of U.S.-flag vessels, a Memorandum of Understanding dated May 16, 1979, between AID, MARAD, and the U.S. Department of Agriculture (USDA), states that "...the PL 480 Title II program will be considered as a single unit or entity." If AID is unable to contract U.S.-flag tonnage for various legitimate reasons (for example, failure to comply with tender terms), they must rectify this imbalance (by vessel type) on subsequent fixtures to ensure they are in annual compliance.

MARAD's preliminary figures for Preference Calendar Year 1991 which covers April 1, 1991, through March 30, 1992, shows the percentage compliance for U.S.-flag liners, bulkers, and tankers as 75 percent, 87.9 percent, and 100 percent, respectively. Overall compliance was 82 percent for U.S.-flag tonnage. Furthermore, we have recently established a procedure with AID and USDA wherein we review their compliance posture on a quarterly basis so that they know of potentially problematic deficits by vessel type and can work to rectify these deficits accordingly.

As to MARAD's ability to control tender terms for agricultural cargo movements, MARAD believes that we have the authority under Section 901(b)(2) of the 1936 Act to approve tender and contract terms. Unfortunately, it does not appear that this authority

extends to PL 480 Title II emergency cargoes. The 1990 amendments to the 1954 Act give great latitude in this program to AID. Title II - Emergency and Private Assistance Programs reads as follows:

SEC. 202. PROVISION OF AGRICULTURAL COMMODITIES.

"(a) EMERGENCY ASSISTANCE.--Notwithstanding any other provision of law, the [AID] Administrator may provide agricultural commodities to meet emergency food needs under this title through governments and public or private agencies, including intergovernmental organizations such as the World Food Program and other multilateral organizations, in such manner and on such terms and conditions as the Administrator determines appropriate to respond to the emergency."

As to the specifics of the current LDA dispute, on January 28, 1993, a U.S.-flag carrier serving the Mombassa, Kenya port (discharging Somalia relief cargo) contacted MARAD to report that Kenya port congestion would severely impact on their ability to timely arrive on a new PL 480 tender for a Balkans cargo. This would potentially expose them to an onerous load delay assessment. We lack authority under Title II emergency cargo legislation to direct removal of this clause, per our discussion above. However, based on the information available to MARAD it appears that these were AID cargo induced delays and therefore AID should invalidate a delay assessment penalty. We suggested setting up a meeting with AID to discuss and document the problem. Unfortunately, we were unable to arrange such a meeting with all parties prior to closure of the tender.

We continue to pursue the LDA matter. MARAD met with carrier representatives on February 11, 1993. One of the topics discussed was LDA. Subsequently, MARAD requested an AID, MARAD, and liner carrier meeting to try to reconcile differences. AID agreed and a session is tentatively scheduled for February 25, 1993.

Your letter also requested that we comment on your September 15, 1992, letter to Dr. Ronald W. Roskens, AID Administrator.

Concerning the AID Loans and Grants Program, it is true that AID, in its annual report to MARAD, subtracts the Determinations of Non-Availability (DNA). However, MARAD does not accept the subtraction of DNA's when determining cargo preference compliance. On September 18, 1992, MARAD wrote AID rejecting the subtraction of DNAs for CY 1991. On October 22, 1992, AID responded to our letter and disagreed with our position. (See copies enclosed.)



MARAD reviews each non-liner DNA on a case-by-case basis. We do not review liner DNAs because we maintain that the cargo can be made available for U.S.-flag vessels at another port or "made up" prior to year end. For Calendar Year 1991 for the AID Loans and Grants Program, with no acceptance of DNAs, our preliminary numbers indicate U.S.-flag liner shipments were 67.1 percent whereas U.S.-flag bulker shipments were only 41.1 percent and tanker shipments were 0 percent. Thus, total compliance without review of DNAs was 46.9 percent. Review of the DNAs for the bulker and tanker movements proved that U.S.-flag bulk and tanker vessels were not available for certain cargoes.

With regard to the OVERSEAS HARRIETTE contract for Albania, MARAD has determined that there was available direct U.S.-flag service and therefore this voyage must be counted as a foreign-flag voyage for the purposes of cargo preference requirements. No ocean freight differential will be paid for this voyage.

You also indicate concerns about tug/barge exclusions in AID programs. MARAD investigates all these exclusions in both AID and USDA tenders. During 1992, AID tender exclusions were for emergency cargo transported to Zambia, which was severely impacted by the southern African drought. The expeditious movement was needed to meet the shortage of food supplies. There were subsequent voyages to Zambia which were not time-sensitive and which therefore utilized tug/barges. In several cases, MARAD intervened with shipper agencies which then changed tender terms to allow tug/barges to bid.

You question if AID seeks MARAD approval for charter party terms. Currently, neither AID nor USDA seeks approval. In view of the increased usage of onerous non-commercial terms, MARAD, as previously stated, is considering exercising its regulatory authority under Section 901(b)(2) of the 1936 Act to establish uniform tender and charter party terms applicable to all agricultural preference cargo movements which are not governed by a notwithstanding clause.

Finally, you questioned the status of the Israeli side letter agreements. This side letter is a voluntary agreement by the Government of Israel (GOI) to purchase 1.6 million tons of U.S. bulk grain and transport 800,000 tons on U.S.-flag vessels. There was no side letter agreement for FY 1990 or FY 1991; however, the GOI shipped 922,000 tons on U.S.-flag vessels. In FY 1992, MARAD wrote to the GOI pressing for the reinstitution of a side letter agreement covering the U.S.-flag carriage of grain. The GOI subsequently reinstituted the side letter and fulfilled its obligation by shipping 800,000 tons of grain. In November 1992, MARAD wrote to the GOI requesting an agreement for 1993,

and the GOI again responded to this request. To date, 650,000 tons have been contracted to move on U.S.-flag vessels. The balance is expected to be fixed by May 1993.

We hope we have fully responded to your concerns. Please contact us if you should need any further information.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Richard E. Bowman', with a long horizontal flourish extending to the right.

RICHARD E. BOWMAN  
Acting Maritime Administrator

Enclosures

April 8 1993

Honorable William O. Lipinski  
Chairman, Subcommittee on  
Merchant Marine  
U.S. House of Representatives  
Washington, D.C. 20515-6230

Dear Chairman Lipinski:

American President Lines, Ltd. and Sea-Land Service, Inc. thank you again for your efforts to clarify cargo preference laws pertaining to the carriage of military cargo. As you know, APL and SLS submitted their comments on U.S.-Government-Impelled Cargo to your committee as part of a joint statement. Afram Lines (USA) Co., Inc., Crowley Maritime Corporation and Farrell Lines also were party to the joint statement at the February 24th hearing.

Our two companies want to elaborate further on several points. The comments provided herein are intended to reinforce our support for the "Maritime Logistical Readiness Act of 1993," which we submitted as an alternative to H.R.57. The additional questions that were given to the carriers as a follow up to the hearing reflect the importance of further clarification on several points related to the carriage of military cargo.

In reference to the "Maritime Logistical Readiness Act of 1993," American President Lines, Ltd. and Sea-Land Service, Inc. advocate the use of privately owned and operated U.S.-flag ships whenever such vessels are available with reasonable timeliness. This applies to privately owned U.S.-flag vessels in liner trades and privately owned and operated U.S.-flag vessels for charter to MSC. Foreign-flag vessels should not be utilized unless privately owned and operated U.S.-flag vessels are not available.

It has been wrongfully alledged by some other carriers that the replacement bill would discriminate against other privately owned U.S.-flag owners and operators who have vessels on charter to MSC, and that American President Lines, Ltd. and Sea-Land Service, Inc. are "attempting to force the Department of Defense to utilize available space on U.S.-flag containerships before other more desirable U.S.-flag vessels can be chartered for such transportation." There is no such language in the draft bill as submitted, nor is it the intent of the "Maritime Logistical Readiness Act of 1993."

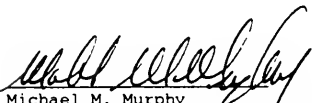
It is important to recognize that there has been a marked shift in procurement authority within the Department of Defense this year. In a Department of Defense Directive dated January 8, 1993, signed by acting Secretary of Defense Donald J. Atwood, under section E(8), "CINCTRANS shall establish and maintain relationships between the Department of Defense and the commercial transportation industry to develop concepts, requirements, and procedures for the Contingency Response Program, the Civil Reserve Air Fleet, and the Sealift Readiness program." Additionally, under section F(1)(a), Delegations of Authority, gave CINCTRANS the authority to "procure commercial transportation services (including lease of transportation assets) in accordance with

applicable law as necessary to carry out the mission of CINTRANS." An earlier directive dated February 14, 1992 from Secretary of Defense Dick Chaney stated; "The mission of the Commander in Chief of the United States Transportation Command (CINTRANS) shall be to provide air, land, and sea transportation for the Department of Defense, both in time of peace and time of war.

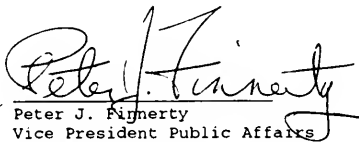
Consistent with this new authority, American President Lines, Ltd. and Sea-Land Service, Inc. are being proactive and are working in concert with the Department of Defense and the United States Transportation Command strengthening the overall sealift capability and not interfering with DOD internal affairs as alleged by others. USTRANSCOM is working closely with the U.S.-flag industry and the DOD. The joint effort is moving forward to develop joint contingency planning, pre-lodged contingency agreements, and the means by which the military can utilize the existing commercial intermodal "pipeline" and infrastructure for both peace time and contingency transportation requirements, again resulting in the opportunity for substantial savings in DOD transportation costs while at the same time promoting the development and maintenance of a financially healthy, privately owned and operated U.S.-flag fleet.

Finally, your efforts to strengthen the cargo preference laws and obtain the commitment from DOD to maximize the use of privately owned U.S.-flag vessels will be a catalyst for the renewed relationship with DOD.

Sincerely,



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American President Lines, Ltd.  
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Sea-Land Service, Inc.  
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Washington, D.C. 20004

Table 16. GOVERNMENT-SPONSORED CARGOES—CALENDAR YEAR 1990

## Public Law 664 Cargoes

Program	U.S.-Flag Revenue (\$1,000)	Total Metric Tons	U.S.-Flag Metric Tons	Percentage U.S.-Flag Tonnage
Agency for International Development (AID):				
Loans and Grants	44,034	1,445,370	737,779	51.0
P.L. 480 - Title II	180,764	2,182,228	1,643,105	75.0 <sup>1</sup>
Section 416	52,294	1,170,867	963,379	82.3
Food for Progress	10,027	244,807	140,169	57.2 <sup>4</sup>
Population Division	1,200	1,992	1,823	91.0
Department of Agriculture: P.L. 480-Title VIII				
	151,398	3,277,395	2,404,952	73.4 <sup>5</sup>
Defense Security Assistance Agency (DSAA) Foreign Military Financing and MAP Merger Programs				
	40,431	212,865	189,339	88.9 <sup>6</sup>
Department of Energy: Bonneville Power Administration Strategic Petroleum Reserve Other Agencies				
	25	284	33	11.6 <sup>4</sup>
	7,577	1,321,661	547,423	41.4 <sup>7,8</sup>
	131	781	511	65.4
Department of Health and Human Services				
	68	93	85	91.3
Department of Justice Programs				
	131	180	145	80.5
Department of Interior Bureau of Reclamation				
	0	289	0	0.0 <sup>4</sup>
National Aeronautics and Space Administration				
	240	693	575	83.0
National Science Foundation				
	4,342	26,077	26,023	99.7
General Services Administration				
	86	127	76	59.8
Department of Transportation Urban Mass Transportation Administration (UMTA)				
	1,428	7,466	3,158	42.0 <sup>4,8</sup>
U.S. Information Agency Voice of America				
	420	1,096	667	60.8
	472	1,976	1,346	68.1
Department of State: Foreign Building Office				
	5,394	15,349	10,622	69.2
Tennessee Valley Authority				
	131	474	437	92.2
Other Agencies				
	26	80	40	50.0 <sup>9</sup>

Table 16: GOVERNMENT-SPONSORED CARGOES--CALENDAR YEAR 1990 (CONTINUED)

## Public Resolution 17 Cargoes:

	Total Metric Tons	U.S.-Flag Metric Tons	Total Freight Revenue	U.S.-Flag Freight Revenue	Percentage U.S.-Flag
Export-Import Bank	54,215	37,290	\$18,116,830	\$14,363,492	79.0 <sup>10</sup>

Cargo Preference Act of 1904 Cargoes: <sup>12,13</sup>

	Total Metric Tons	Metric Tons <sup>11</sup> Dry Cargo	Metric Tons Petroleum	Percentage
Department of Defense Troop Support Cargoes				
Military Sealift Command (MSC)				
U.S.-flag privately owned vessels	1,813,813	1,813,813	0	15.5
U.S. Government-owned vessels	820,287	759,287	61,000	7.0
MSC chartered vessels	7,526,501	550,657	6,975,844	64.1
Foreign-Flag vessels	1,578,765	497,978	1,080,787	13.4
Total cargo of MSC Troop Support Cargo	11,739,366	3,621,735	8,117,631	100.0
	U.S.-Flag Revenue (\$1,000)	Total Metric Tons	U.S.-Flag Metric Tons	Percentage U.S.-Flag Tonnage
Department of Defense Commercial Contractor Cargoes:				
Army Materiel Command	4,874	20,883	17,552	84.0
Air Force	1,439	2,912	2,815	96.6
Corps of Engineers	820	2,684	2,678	99.9
Defense Logistics Agency	1,121	7,619	7,547	99.1
Navy	3,799	13,480	12,965	96.1
Total U.S.-Flag cargo Department of Defense Commercial Contractor Cargoes	12,053	47,578	43,557	91.5
Defense Security Assistance Agency (DSAA):				
Southern Region Amendment (SRA)	7,648	29,799	29,754	97.7 <sup>14</sup>

1. The Food Security Act of 1985 (P.L. 99-198) impacted on the P.L. 480 Title I/III, II, the Section 416, and the Food for Progress programs by changing the reporting period from a calendar year to a 12-month period, commencing April 1, 1986, through March 31, 1987, and by increasing the U.S.-flag share from 50 to 75 percent over a 3-year period. The required U.S.-flag share for the current reporting period, April 1, 1990, to March 31, 1991, is 75 percent.

2. Includes civilian agencies, Department of Defense (DOD) Foreign Military Sales Program, and a partial listing of DOD commercial contractor shipments. DOD Troop Support cargoes processed by the MSC are also reported.

3. Program shown as achieving compliance. USDA is reviewing relay vessels employed to carry transhipped cargoes. If they determine that the vessels were not qualified, the program may end in a negative position.

4. This agency complied with the statute, as imbalance in favor of foreign-flag shipments was due to the non-availability of U.S.-flag service.

5. USDA's failure to achieve the 75 percent U.S.-flag shipping requirement is noted with explanation. The Food, Agriculture, Conservation, and Trade Act of 1990 made amendments to P.L. 480 which required USDA to promulgate new regulations regarding conflict of interest and mandated the signing of a new Executive Order to implement the revised delegations of authority for the Title I and new Title III program. USDA indicated that U.S.-flag vessels were not available in many cases during the program year. Because of the extenuating circumstances, MARAD considers USDA to be in compliance for this reporting period.

6. These programs' tonnages are reflected in metric tons for uniformity only. Cargo preference compliance for those programs involving high cube/low density cargo, is achieved on a gross revenue ton basis. Percentages reflected on a weight tonnage basis for such programs do not necessarily represent the exact extent of the programs' compliance with the statute.

7. MARAD accounts for SPR Program on the basis of long ton miles (LTM). In CY 1990 this program provided a total of 6,400 billion LTM of which U.S.-flag carriers derived 2,017 billion LTM or 31.40 percent.

8. This program is not in compliance for CY 1990. However, various events beyond DOE's control, including the Persian Gulf war, precluded DOE from being able to fulfill the 50 percent U.S.-flag LTM shipping requirement. Based on an agreement between the Secretary of Transportation and the Secretary of Education, dated October 29, 1982, the SPR's program compliance obligation is cumulative. Between CY 1981 and 1990, the SPR provided a total of 254.5 billion LTM of which U.S.-flag carriers derived 132.7 billion LTM or 52 percent.

9. Cargo of Government agencies that generated less than 25 metric tons of cargo in 1990.

- 
10. Compliance is based on freight revenue only. U.S.-flag participation on a tonnage basis was 69 percent.
11. As MSC records liner cargo in measurement tons, MARAD has converted these to metric tons using a factor of .274 metric tons per measurement ton. MARAD is unable to verify the troop support cargo data, but merely reflects that information provided by MSC.
12. DOD's contracting activities are subject to the Cargo Preference Act of 1904 (10 USC 2531). P.L. 664 impacts 10 USC 2631 requiring that privately owned U.S.-flag commercial vessels must be used for at least 50 percent of DOD's 100 percent U.S.-flag requirement. DOD's contractors must use privately owned U.S.-flag commercial vessels for 100 percent of their cargoes since such cargoes are processed within the commercial transformation environment.
13. Data reflects only a partial listing of DOD's contracting activities due to the time required for DOD to update its active contracts to include the full U.S.-flag shipping provisions contained in the FAR and the DPAR.
14. SRA cargo transfers are not subject to cargo preference. However, as a matter of agency policy, DSAA requires 100 percent U.S.-flag carriage.
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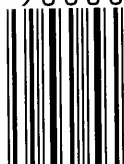




ISBN 0-16-041036-3



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